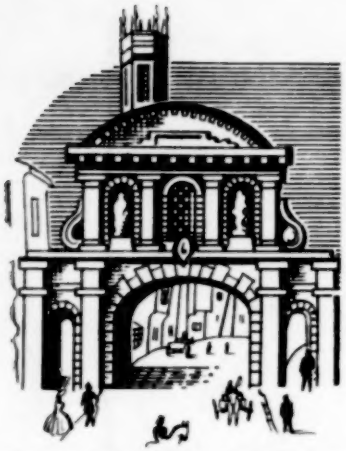

JUSTICE OF THE PEACE & LOCAL GOVERNMENT REVIEW

Saturday, October 29, 1955 **Vol. CXIX. No. 44**

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. 6d. per line and 3s. 6d. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt 2 p.m. Wednesday*

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note:* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

CITY OF LEEDS

Assistant Solicitor

APPLICATIONS are invited for the appointment of an Assistant Solicitor. The maximum salary for the post is £900 per annum and the commencing salary will be £780 per annum or higher according to qualifications and experience.

The person appointed will be required to conduct prosecutions on behalf of the Police and the Corporation and to assist in the work of the office generally. He will be subject to the Local Government Superannuation Acts, 1937 to 1953, and will be required to pass a medical examination before his appointment is confirmed.

Previous Local Government experience is not essential and applications will be considered from newly qualified Solicitors.

Applications, with details of age, date of admission, qualifications and experience, together with the names of two persons to whom reference may be made, must reach me by November 7, 1955.

Canvassing in any form, either directly or indirectly, will be a disqualification.

ROBERT CRUTE,
Town Clerk.

Civic Hall,
Leeds, 1.

COUNTY COUNCIL OF MIDDLESEX

Appointment of Principal Assistant in the Department of the Clerk of the County Council

APPLICATIONS invited from Solicitors with extensive local government experience for post of Principal Assistant in charge of important section of Clerk's Department dealing mainly with the administrative and legal work of Health, Children's, Welfare, Fire Brigade and Civil Defence Committees.

Salary (J.N.C. Grade "G") £1,675 × £52 10s. —£1,937 10s. p.a. Appointment pensionable and subject to medical assessment and prescribed conditions.

Applications, stating age, qualifications, full details of experience, and names and addresses of three referees, to be received by me by November 14. (Quote R.562 J.P.) Canvassing disqualifies.

KENNETH GOODACRE,
Clerk of the County Council.

Guildhall,
Westminster, S.W.1.

HERTFORDSHIRE MAGISTRATES' COURTS COMMITTEE

Petty Sessional Division of Watford

Justices' Clerk's Cashier

APPLICATIONS are invited for this appointment from persons experienced in fines and fees accounting, Collecting Officer's accounts, process for arrears and the general work of a Justices' Clerk's Office.

Applications, stating age, qualifications and experience, should reach the undersigned, together with three copies of recent testimonials, not later than Saturday, November 5, 1955.

The salary will be within Grade II of the A.P. & T. Division of the National Joint Council's Scales for Local Authorities (£560 × £20—£640 per annum).

The appointment will be subject to the Local Government Superannuation Act, 1953.

D. W. WHITAKER,
Clerk to the Justices.

The Court House,
Clarendon Road,
Watford, Herts.

STAFFORDSHIRE COMBINED AREAS PROBATION COMMITTEE

Appointment of Full-time Male and Female Probation Officers

APPLICATIONS are invited for the appointment of full-time Male and Female Probation Officers in the area of the Staffordshire Combined Probation Committee.

The appointments will be subject to the Probation Rules and the salaries will be in accordance with the Rules together with a travelling allowance. The salaries will be subject to superannuation deductions, and the selected candidates will be required to pass a medical examination.

Applications, stating age, qualifications and experience, and accompanied by copies of not more than three recent testimonials, must reach the undersigned not later than Saturday, November 12, 1955.

T. H. EVANS,
Clerk of the Peace.

County Buildings,
Stafford.

NESTON URBAN DISTRICT COUNCIL

Appointment of Deputy Clerk and Chief Financial Officer

APPLICATIONS are invited from suitably qualified persons for the above appointment.

The salary and conditions of service will be in accordance with the recommendations of the Joint Negotiating Committee for Chief Officers of Local Authorities, for an Urban District with a population of 10–15,000.

The appointment is superannuable, and terminable by three months' notice on either side.

Applications, stating age, particulars of experience and qualifications, present and previous appointments, with the names of three persons to whom reference may be made, should reach me not later than Thursday, November 24, 1955

Candidates selected for interview will be invited to attend on December 1, 1955.

Canvassing will disqualify.

FRANK R. POOLE,
Clerk of the Council.

Council Offices,
Town Hall,
Neston, Wirral.
October 21, 1955.

WHITSTABLE URBAN DISTRICT COUNCIL

Law and Committee Clerk

APPLICATIONS are invited for this appointment, salary A.P.T. II, £560—£640; commencing £560, from persons having conveyancing, local land charges, and committee experience.

Usual conditions apply.

Housing accommodation will be made available if necessary. Applications, naming two referees, to me by November 2, 1955.

F. TOMLINSON,
Clerk of the Council.

The Castle,
Whitstable, Kent.

COUNTY BOROUGH OF MIDDLESBROUGH

ASSISTANT Solicitor required for Town Clerk's Department. Salary scale £690 × £30 —£900 per annum. The commencing salary will depend on the length of experience since admission. N.J.C. Conditions, superannuation scheme.

Application forms from the Town Clerk, to be returned by November 9, 1955.

BOROUGH OF EALING

LEGAL Clerk required. Conveyancing experience essential. Salary Grade A.P.T. II (£590—£670 per annum) (£10 less if under 26). Local government experience not essential. Applications, stating age, qualifications and experience, and names of two referees, to the undersigned by November 7, 1955.

Canvassing disqualifies.

E. J. COPE-BROWN,
Town Clerk.

Town Hall,
Ealing, W.5.

Justice of the Peace and LOCAL GOVERNMENT REVIEW

ESTABLISHED 1837

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SATURDAY, OCTOBER 29, 1955

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CONTENTS

REPORTS

NOTES OF THE WEEK

Adoption: Withdrawal of Consent

It was decided in the case of *Re Hollyman* [1945] 1 All E.R. 290; 109 J.P. 95, that where consent to the making of an adoption order has been given, it may be withdrawn up to the time the order is made. In *Watson and Another* v. *Nikolaisen* [1955] 2 All E.R. 427; 119 J.P. 419, another case in which consent had been withdrawn upon a second application for an order, it was sought to establish that the mother's consent could be dispensed with on the ground that she had abandoned the infant. The Divisional Court held that a parent "abandoned" an infant within the meaning of s. 3 (1) (*a*) of the Adoption Act, 1950, only if the abandonment was of such a kind as that which rendered a parent liable under the criminal law. The mother had handed over her child to friends. These friends maintained the child for two or three years, and the mother never visited her, though the justices found that she had an affection for the child. The Court held that the mother had not abandoned the child within the meaning of s. 3 (1) (*a*), because she had not left the child to her fate, but had handed her over to people in whom she had confidence, and the justices were entitled to dismiss the application.

It is interesting to compare the position as to consent and withdrawal with that obtaining in Australia, where no doubt the law differs from the English in some respects. Before the Judicial Committee of the Privy Council (*see The Times*, October 11) was the case of *Murray* v. *Mace and Another*, which dealt with the question of the right of a mother to retract her consent. It was stated that the question involved was of great and general importance in the administration of justice in New South Wales, in that the judgment of the High Court had decided, *inter alia*, that the withdrawal, before a Judge's order for adoption, of a consent previously given by the mother, was ineffective and the judgment had the effect of making the consent irrevocable. It was submitted that there had been a disregard of the primary rights of the mother. Lord Morton pointed out that the High Court was relying not only on the fact that the mother signed the consent but that she had not seen the child or had anything to do with him.

Their Lordships dismissed the mother's petition for special leave to appeal, and apparently the effect will be the making of an adoption order. Reasons have not so far been reported, and it will be instructive if in due course these are made available in the reports.

Stealing from the Meter

Stealing from the gas or electricity meter is a common offence and that the money was only borrowed to meet a temporary need is a common defence. In a case reported in *The Times* of October 20, the defendant, one Marsh, had successfully contended before the justices that the money in the meter had not passed into the ownership of the electricity board and that his obligation was only to pay the account eventually. The justices regarded the meter as a private money-box, and dismissed the case. The evidence showed that the defendant had broken a padlock to get at the money, and that when there should have been over £20 in the box there was only 8*s.*

The prosecutor appealed by Case Stated, and the Divisional Court allowed the appeal, sending the case back to the justices with an intimation that the charge of stealing was proved. The Lord Chief Justice said that when the money was placed in the meter it became the property of the board.

Sausages and Cakes

We doubt whether the housewife and her family are deeply interested in the exact percentage of pork in a pork sausage, always provided it obviously contains a substantial amount, tastes good, and contains nothing injurious and that the price is right. In the case of *Marston* v. *Loney* (*The Times*, October 12) the Divisional Court upheld the decision of justices who had not acted upon the opinion of the analyst as to what should be the standard, after hearing evidence of the defendant. The Lord Chief Justice, in the course of his judgment, observed that the justices had shown a certain amount of good commonsense, as county justices so often did. This is gratifying for lay justices, who receive publicity often enough when they are criticized, but far less when their

decisions are approved. A point in the judgment to be noted is that reports of analysts should be attached to special cases.

Another case under the Food and Drugs Act was *J. Miller, Ltd.* v. *Battersea Borough Council* (*see* p. 703, *post*). This related to the sale of a chocolate-coated cake in which was found a piece of metal. The prosecution was under s. 9 for selling food unfit for human consumption, and the Divisional Court quashed the conviction on the ground that the offence should have been alleged as against s. 3. The argument and the judgments drew a clear distinction between the two sections and their scope. Doubtless there must be some borderline cases in which it may be open to doubt as to which section is appropriate, but the principle is there as a guide.

Insurance—Misunderstanding the Policy

In *Rennison* v. *Knowler* [1947] 1 All E.R. 302; 111 J.P. 171, it was decided that the fact that a man misapprehends the legal effect of his policy is not a special reason for ordering that he be not disqualified when he is convicted of an offence under s. 35 of the Road Traffic Act, 1930. The Lord Chief Justice said: "The obvious duty of the owner is to see that he is insured and to make himself acquainted with the contents of his policy. He is not obliged to have a motor vehicle, but, if he does, he must see that he has such a policy as the law requires."

We call attention to this case because of a report we have seen in a daily newspaper of a case in which, according to the report, a motor-cycle owner allowed his friend to ride the motor cycle when the policy covered the holder only. The report states that the owner said that his cover note stated that his policy would be fully comprehensive with no special conditions, and he thought that it covered his friend to ride the motor cycle. The friend was involved in an accident and it was found that the policy, although a "comprehensive" one, covered the holder only. According to the report, the owner was fined £5 for allowing his friend to drive the cycle whilst uninsured, but the magistrates found special reasons why he should not be disqualified.

It may be, since the report is only a brief one, that some other evidence was put before the court which entitled it to find, as a matter of law, that there were special reasons for ordering that the owner was not to be disqualified; but if their decision was based on the fact that he read the word "comprehensive" as meaning that the policy covered his friend this would seem clearly to have been a misapprehension of the legal effect of his policy, and not to have constituted a special reason. The matter is one of some importance because the law (as the Lord Chief Justice pointed out in the case referred to above) clearly puts upon a person who uses, or allows someone else to use, a motor vehicle on the road the responsibility of ensuring, not just thinking, that there is a proper policy in force. Unless courts give due effect to these provisions and so make motorists take proper care to observe them, persons injured in road accidents may not get the compensation to which they are clearly entitled. There is no need to emphasize that the present accident rate is such that no court should seek, except on proper grounds, to avoid imposing the disqualification which Parliament has decided should follow conviction of offences under s. 35.

Adoption: Consent of Parent

The consent of a parent who opposes the making of an adoption order is not lightly to be dispensed with, as decisions of the High Court have shown. In particular, justices have to remember that adoption, which alters status and family relationship, is something more than guardianship or custody, and they must not make an order, when the consent of a parent is withheld, merely because an adoption order would be for the benefit of the child, so long as it is not established that the parent is acting unreasonably, *Hitchcock* v. *W.B.* [1952] 2 All E.R. 119.

All this does not mean that justices are precluded from finding that the consent of a parent is unreasonably withheld, but only that they must address their minds to the right considerations.

In *L.* v. *M. and Another* (*see* p. 702, *post*) the Divisional Court upheld the decision of justices who had made an adoption order, the consent of the father having been, in the opinion of the justices, unreasonably withheld. In the course of his judgment the Lord Chief Justice said it was for the justices to come to the conclusion as to whether the parent withholding the consent was acting reasonably or not. If there was evidence on which the justices could find that the parent's consent was unreasonably withheld, and if the Court found that they had applied their minds to the proper matters, the Court could not interfere. After referring to the conduct of the father, who had apparently taken little interest in the child for a considerable time, and to the divorce of the parents, Lord Goddard observed that the justices considered that the father's reason for opposing the order was not because he desired to exercise parental rights, but because he wanted to spite or "score off" the mother. The Court was clearly of opinion that the justices had evidence on which they could act as they did, and there was no ground on which the Court could interfere.

Disqualification for Life

We have not entertained serious doubts about the power of a magistrates' court to impose disqualification for holding a driving licence for life, provided the offence is not one to which a statutory limitation applies. The period of disqualification must not be indefinite, *R.* v. *Fowler* [1937] 2 All E.R. 380; 101 J.P. 244, but for life is a definite period even though its duration is unknown. We believe there have been instances of such disqualifications by Judges at Assizes.

The Court of Criminal Appeal in Northern Ireland has upheld such a disqualification in the case of *R.* v. *Wallace* [1955] N.I. 137, cited in *Butterworths Weekly Law Sheet* dated October 13. The appellant had been convicted of driving a car while under the influence of drink.

Campaign against Litter

Local authorities, and some other organizations, are taking up the question of litter, and already some prosecutions have taken place. In Leeds a young man was fined £3 for throwing down in the street the paper which had contained his fish and chips. It was said that he was one of a group, all of whom picked up paper at the request of a constable with the exception of the defendant, who told the constable to pick it up himself, and then refused his name and address. This is reported in the *Yorkshire Post*, which in an editorial rightly points out that if the byelaws are to be enforced the authorities must see that there are plenty of receptacles provided.

The attitude of offenders, as in the Leeds case, sometimes aggravates the offence. Many offend through thoughtlessness, but others, it appears, are defiant. A gardener in a town in Scotland, working in a beautiful recreation ground, told a visitor how many loads of litter were cleared away on a Monday, and added "It's not the visitors from other places, it's the townspeople. When we speak to them about it, they say 'Pick it up yourself: we pay you to do it'."

There must be a change of outlook if the litter nuisance is to be abolished.

MORE ODDMENTS FROM THE "J.P."

By THE REV. W. J. BOLT, B.A., LL.M.

(*Continued from p. 684, ante*)

If "Practical Points" is a faithful mirror of contemporary thought, 1845 was a year when concern about the new-fangled friendly societies rose to its zenith. Anxious readers submitted an infinite variety of bewilderments to the editor for his counsel.

Page 185 contains a tedious and complicated query about the larceny of the funds of a Lodge of Oddfellows by a publican on whose premises it met; and a query at p. 282 sets out the sorrows of a lodge whose trustees lent the funds on mortgage.

At p. 285, we meet another order. "Benefit Societies: Foresters. A benefit society under the title Ancient Order of Foresters is held at a public house, the landlord of which is an honorary member, having paid one guinea for his admission and has made several donations since. He is likewise the treasurer and has possession of the funds. He does not pay in regular contributions, the same as financial members, neither does he claim any sick or funeral benefits. He refuses to give up the funds into another treasurer's hands as he is about leaving the house. As the society is not enrolled, what way can they proceed to compel him to give up the moneys, and who are the parties to proceed against him? An honorary member is not obliged to pay more than the guinea admission, therefore all other sums that he may pay are voluntary gifts. The society is not in the metropolitan police district. J.W." "We are really unable to assist our correspondent with any effectual advice. Even taking the landlord not to be a member, he is only in the condition of a stranger who refuses to deliver up what has been entrusted to his custody and this is no criminal offence, nor an act for which a summary remedy lies. The action of trover is the proper and only legal remedy. If the members can take the box from him without a breach of the peace, they may do so. It is most grievous that the industrious and otherwise prudent portion of the operative classes will thus run the risk of losing all their savings and all benefits from them."

A different anxiety appears at p. 410. "Friendly societies, construction of and enforcing rules. From January 1, 1838, the stewards of this club (r. 19) cease to pay the sick, and r. 38 (p. 15) obliged them to pay over the contributions, fines, etc., to a deputy treasurer to be appointed as directed under r. 39, p. 15. In consequence of the stewards having defrauded the funds to a great extent, rr. 38 and 39, duly certified and enrolled according to law, were framed and acted upon; and on January 1, 1838, AB was appointed deputy treasurer and another person warden, both giving bond to the clerk of the peace with sureties (10 Geo. IV, 56) for the due execution of their offices. AB continued in the office of deputy treasurer until January 1, 1845, when he resigned, and ever since the stewards have taken upon themselves to receive the contributions, fines, etc., and pay over the same moneys to the warden. In fact, no successor to AB has been appointed, and the end of all this will be that some needy persons will become stewards, and pocket the money as heretofore before the rules were altered, unless the society are compelled to appoint a deputy treasurer according to the rules. Your opinion is requested as to the mode to be adopted by the members or any given number to compel the appointment of a successor to AB. Should a notice be given to the stewards, warden and clerk, and by whom; or may any application be made to the courts for a *mandamus*, or a petition to the court of exchequer under 10 Geo. IV, c. 56, ss. 14 and 25, to enforce obedience to rr. 38 and 39? A Subscriber." "The only course to compel an election is a *mandamus*. But why does not the society elect a deputy treasurer at one of its monthly or other meetings, if the committee does not do it? Rule 39 admits of this, as does 10 Geo. IV, 56, 4. If the majority of the society, however, will not proceed to an election, then the only course is to apply for a *mandamus* to compel them, and the application for the writ may be made by some of the members after they have required the society to elect and received a refusal. There should be as little delay as possible."

Another poser on the same page runs: "Friendly societies; attending funerals; construction. If C dies in any other place than U, and not within a mile from the latter place, but is buried there, are not the clerk, stewards, and committee bound to attend the funeral of a member buried in U, but dying elsewhere and not within the mile? An Old Subscriber." The editor was never stymied. "The death as well as the burial must be in U, we think, to make it compulsory on the members to attend the funeral. 'Dying and being buried in U or within a mile thereof,' 'members dying and buried in U' mean, that both the death and burial must be in U."

At p. 446, the editor accepts an invitation to interpret a society's rule of compulsory church attendance on its feast-day.

Jurymen become the subject of correspondence in 1845. A letter at p. 287 runs: "Gentlemen, A recent correspondent of your journal complains of jurymen being taken from the least instructed classes as well as of their being in general ignorant persons. This may be, but let him remember that it was never otherwise. Trial by jury is well known to be the palladium, etc., of English liberty and has ever been so, although all along, the juries were abundantly ignorant. What security have we that, if more enlightened, they may not cease to be this palladium, etc.? The experiment would be hazardous, so let well enough alone. Jurymen having their heads filled with knowledge, turned into a box together, would perhaps be as fatal to the administration of justice as ever the Grecian horse, his belly full of troops, was to the Trojan palladium."

This effort evokes a scathing letter on p. 319, from T.Y. of Tavistock, who is gently rebuked by the editor. "Our correspondent would have managed this argument better if he had been more temperate and less personal."

The advertisement columns at p. 304 contain the Clearance List of a Law Bookseller, William H. Bond, of 8 Bell Yard, Temple Bar, who offers, among other items, *Blackstone's Commentaries*, in four volumes, at 4*s.* 6*d.*

The clerk of the peace comes occasionally into the picture. A letter in 1845, at p. 223, states: "Gentlemen, This officer will be compelled by the new Bill to have his office and residence at the county town. It is a great evil to have papers carried backwards and forwards as at present. It also happens not infrequently that a paper is wanted at the sessions, etc., for which he must send express to his residence, perhaps 20 miles off, although the paper is wanted for the moment, or not for an hour. The officer and the papers should always be found at one place, and that place should be the county town. Your obedient servant. A Magistrate."

A Parliamentary Bill mentioned at pp. 449 and 463, proposes drastic changes in the magistrates' courts. "If passed, it will altogether extinguish justices' clerks, and compel justices to be their own clerks, at the same time that it will take from them

all power to award costs. . . . In fact, it will put a whole stop to the summary jurisdiction."

The contemporary legal standing of coroners was explored in a case reported in 1845, at p. 341. "Queen's Bench. In re Slyman. District coroner: election and qualifications. Robinson moved for a rule that should call upon a gentleman named Slyman to show cause why an information in the nature of a *Quo Warranto* should not issue, commanding him to show by what authority he assumes to exercise the office of coroner for the district of Newtown in the county of Montgomery. The election to the office of coroner for that district took place under 7-8 Vic. 92, in January last, and the returning officer returned Mr. Slyman as duly elected. To the return there were three objections. (1) That several persons, in number exceeding 200, had voted for Mr. Slyman and were not qualified, and that several persons voted twice for Mr. Slyman. (2) That Mr. Slyman had not the necessary freehold qualification for the office. (3) That the town of Montgomery was one of the polling places fixed by the returning office, and as it was a borough having a coroner of its own, it was not within the district for which the election was to take place, within the meaning of 7-8 Vic. c. 92, s. 12. To show that a *Quo Warranto* would lie, he quoted *R.* v. *Sayer*, 5 T.R. 376. Rule *Nisi*."

A case reported at 1845, p. 402, turned on the jurisdiction claimed by the Lord Mayor of London over the river Thames. "Vice-Chancellor's Court. *Cavelle* v. *Lord Mayor of London.* This was an *ex parte* motion on behalf of the United Greenwich Free Watermen's Floating Accommodation Society, for a special injunction to restrain the Lord Mayor from proceeding to remove certain floating barges which formed a pier for the landing of passengers, and was of incalculable benefit to the inhabitants of Greenwich and their visitors. Mr. Prior read the affidavits of the watermen, which stated that from time immemorial they had enjoyed the privilege of landing passengers at the Garden Stairs at Greenwich in their boats but that the general use of steam vessels having changed the nature of the communication with the shore and rendered their landing planks as well as their boats to a great measure useless, they had formed themselves into an association and constructed a floating pier of barges for the purpose of landing passengers. The corporation of the city of London, who with the Lord Mayor at their head, were the conservators of the river Thames, had affirmed this pier to be a nuisance and an obstruction to the navigation. Various presentments had taken place on the subject, but none of them had been followed up to a legal decision on the question. In this state of things the present Lord Mayor, having given the plaintiffs due notice of his entrance into office, issued his warrant a few days back, compulsorily to remove the pier of barges, and had directed the execution to take place this day. The plaintiffs protested against the right of the Lord Mayor in his conservative capacity to deprive them of their ancient right of landing passengers at this spot, and were only anxious to have the question fairly decided in the due course of law. Leave given for short leave of motion."

An unusual inquiry was submitted in 1845, at p. 543. "Shire Halls; admission of public. Gentlemen, During an Assize, can the high sheriff direct the bench next the judge to be cleared of those who are sitting there, in order to make room for his private friends? Can he legally claim more than is necessary for himself and his chaplain? Do you consider that county magistrates as well as the sheriff can legally claim a seat on the bench on each side of the judge? And after the sheriff is accommodated, can the county magistrates then order the bench to be cleared in order that they may be seated?"

There is the true ring of authenticity about the query submitted at p. 602. "Malicious Injuries to the Person; Costs. W.L.M. was recently brought before the justices of this borough by a warrant charging him with having administered poison in a glass of porter to a poor woman named M. Her evidence was taken and that of other persons and also the evidence of the surgeon who attended the complainant. He deposed that 'it was his impression she was suffering from poison of some irritative character, some corrosive mineral poison.' Upon this he was remanded, and the magistrates deemed it necessary to have the contents of a vomit brought up by emetics, analysed. This was done, but sufficient poison could not be detected, consequently the case broke down, and the prisoner was discharged from the capital offence but bound over to keep the peace, he having used violent threats to the complainant. From what fund could the costs of the analysation be obtained? Could the magistrates who heard the case and suggested the investigation, make an order on the county treasurer? Your esteemed opinion will be deemed a favour by H.J.P." "The law has provided no means for paying the costs of the analysis. If the prisoner had been committed for trial for the felony, such costs might have been obtained on the certificate of the examining magistrates though no indictment had been preferred, but as the case stopped short of commitment, the 7 Geo. IV, 64, cannot be applied."

A query in 1845, p. 602, suggests how local benches referred their difficulties to the "J.P." "Post horses; information; time. An information has been laid before a magistrate under 2-3 Will. IV, 120, against a postmaster for letting two horses for hire for drawing an omnibus, for a period less than 28 days, to wit, for part of a day, and charging for the hire 4*s.* 6*d.*, and neglecting to insert the sum in excise office weekly accounts with the particulars thereof, contrary to the statute, whereby he hath forfeited for the offence £20. (*See* s. 74, and sch. A). The offence was committed on May 12 last, and the information laid on September 8, and states that 'heretofore and within four calendar months last past, to wit, on May 12, etc.' Section 116 enacts that all actions and prosecutions which shall be brought or commenced under the authority of this Act, shall be commenced and prosecuted within three calendar months after the fact committed, and not afterwards. The informer contends that this clause does not affect proceedings before justices of the peace, but has relation to proceedings in the superior courts by civil action only. The justices before whom the defendant is summoned, will thank you for your guidance at the hearing next week. S."

That class of offence comes into the news only very rarely. It figures in a query in the following year, 1846, at p. 43. "A licensed postmaster lets a horse for two days and neglects to make an entry thereof in the post horse weekly account. An information is laid against him by officers of the excise. In the information he is stated to be licensed to let horses. Is it needful that the licence should be produced before the magistrates, and as it is in the possession of the defendant, should he have notice to produce it? And then, on his failing to do so, can secondary evidence of its existence be admitted? Also, in beershop keepers and publicans and all similar persons, must the licence be produced in like manner?"

The legal validity of a famous institution is the ground of an inquiry in 1846, at p. 44. "Marriage; Gretna Green. On a late occasion of a marriage of this nature, a very general impression prevailed that they were no longer legal. I cannot however, discover any statute or decision on it, and shall be obliged by your referring to it. Philo." "These marriages are still legal. The supposition arose out of a provision introduced by Lord Brougham into a Bill for regulating marriages, brought in by him in the last session of Parliament, which was not persisted in by him."

[The above article by Mr. Bolt is the last in the present series of articles on the subject it is intended to publish. We hope to publish a new series in due course.—*Ed., J.P. and L.G.R.*]

RIPARIAN RIGHTS

By A. S. WISDOM

It is the writer's experience that many people regard riparian rights, or "water rights," with some suspicion and doubt, deserving of an opinion of counsel before any dealings with such rights are begun. It is hoped here to shed a little light on an interesting topic, and an important part of the law relating to waters and watercourses.

The owner or occupier of land abutting on a stream, or through which a river flows, is entitled to the enjoyment of certain "riparian" rights. For riparian rights properly so named to arise, the land must be in actual contact with the stream, laterally or vertically, and there is no distinction in principle between riparian rights on the banks of navigable or tidal rivers and on those of non-navigable rivers: *North Shore Railway* v. *Pion* (1889) 61 L.T. 525, P.C.

The rights which a riparian proprietor has with respect to the water are entirely derived from the possession of land abutting on the river, and if he grants away any portion of the land so abutting the grantee becomes a riparian proprietor and has similar rights. If he grants away part of his estate not abutting on the river, the grantee has no water rights by virtue merely of his occupation: *Stockport Waterworks Co.* v. *Potter* (1864) 10 L.T. 748. Riparian rights are founded on the right of access to the stream and a riparian tenement must be in reasonable proximity to the water; a site some distance from a river but connected to it by a strip of land may be too far from the river bank to sustain the character of a riparian tenement: *Attwood* v. *Llay Main Collieries* (1926) 134 L.T. 268. The right to have a stream to flow in its natural state without diminution or alteration is an incident to the property in the land through which it passes: *Embrey* v. *Owen* (1851) 6 Ex. 353.

In dealing with riparian rights it is convenient to distinguish between those which concern the bed and banks of a watercourse and those which relate to the use and flow of the running stream.

Rights concerning the bed and banks

In *Bickett* v. *Morris* (1866) 30 J.P. 532, it was held that each proprietor on the banks of a non-tidal river has a property in the soil of the *alveus* (bed) from his own side to the *medium filum fluminis*, but is not entitled to use the *alveus* in such a manner as to interfere with the natural flow of the water or abridge the width of the stream, or to interfere with its natural course, but anything done *in alveo* which produces no sensible effect on the stream is allowable. A riparian owner on the banks of a tidal river has no greater rights to use the *alveus* than he has on a non-tidal river: *A.-G.* v. *Lonsdale* (1868) 20 L.T. 64.

A riparian owner may place stakes and wattles on the soil of a river to prevent erosion by floods and make pens in the stream to prevent cattle from straying: *Hanbury* v. *Jenkins* (1901) 65 J.P. 631. He is entitled to raise his banks to protect his property from flooding, so long as he conducts his operations so as not to do any actual injury to property on the other side of the river: *Bickett* v. *Morris*, *supra*. As regards fishing, the presumption is that the owner of the bed of a non-tidal river has the right to fish in the stream and to prevent other persons from fishing there: *Blount* v. *Layard* [1891] 2 Ch. 681.

It should be noted that a riparian or sea frontager is not at common law under a liability to maintain his frontage for the protection of adjoining land owners (*Hudson* v. *Tabor* (1877) 42 J.P. 20), apart from any obligation which may be imposed upon him by covenant, statute, prescription, etc. Nor is a riparian owner required to clear the channel if it becomes silted up and choked with weeds (*Hodgson* v. *York Corporation* (1873) 37 J.P. 725, but *see* s. 259 of the Public Health Act, 1936) and he may not remove a natural accretion of gravel or shoal on the bed of a river so as to restore the flow of the water to its former state as regards velocity, direction, and height: *Withers* v. *Purchase* (1889) 60 L.T. 819.

These common law rules must, however, be construed in the light of the Land Drainage Act, 1930 which, *inter alia*, provides that watercourses must be put in proper order if the condition of the stream injures, or is likely to injure, agricultural land (s. 35; *see* also s. 67); enables obligations to repair watercourses and drainage works to be enforced (s. 36), and requires that the erection of dams, weirs, and other like obstructions in watercourses and the construction of new bridges across watercourses must be approved by the appropriate catchment or river board (ss. 44 and 64). Further provisions are to be found in the land drainage byelaws of these authorities and in subsequent legislation, *e.g.*, ss. 16 and 17 of the Agriculture (Miscellaneous War Provisions) Act, 1940; s. 10 of the Agriculture (Miscellaneous Provisions) Act, 1943, and ss. 263 *et seq.*, of the Public Health Act, 1936.

Rights on navigable rivers

A riparian owner on the banks of a tidal navigable river has rights and natural easements similar to those which belong to a riparian owner above the flow of the tide, subject to the public right of navigation: *Lyon* v. *Fishmongers' Co.* (1876) 42 J.P. 163. Generally speaking, a land owner may make such use of the bed of the river as he thinks fit, provided the public right of navigation is not interfered with: *Orr Ewing* v. *Colquhoun* (1877) 2 A.C. 839. Any works erected on the bed of a navigable river may, owing to a change in the bed or other circumstances, become at some future time a nuisance and liable to abatement: *A.-G.* v. *Terry* (1874) 38 J.P. 340.

The rights on navigable rivers relate mainly to mooring and access. A riparian owner is entitled to moor vessels of ordinary size at a wharf alongside his property for the purposes of loading and unloading at reasonable times and for a reasonable period, and it does not matter if the vessel overlaps his premises, provided it does not interfere with the proper right of access to neighbouring premises, if used as a dock by vessels: *Original Hartlepool Collieries* v. *Gibb* (1877) 41 J.P. 660. A riparian proprietor may construct and moor a floating wharf and boathouse off his premises provided it does not obstruct the navigation (*Booth* v. *Ratté* (1889) 62 L.T. 198), and it might be mentioned here that the mooring of houseboats in a navigable channel, as distinct from the construction of landing stages and other associated works, does not require planning permission: (1951) J.P.L. 665. On a non-navigable river, a riparian owner might perhaps be able to establish a right to boat for purposes of recreation for himself and his family by custom: *Bourke* v. *Davis* (1889) 62 L.T. 34.

A public navigable river is a public highway and the owners of land on the banks have a right to go on the river from any spot on their own land (*Marshall* v. *Ulleswater Steam Navigation Co.* (1871) 36 J.P. 583), and any interference with a right of

access to a navigable river is actionable without proof of special damage: *Rose* v. *Groves* (1843) 5 M. & G. 613.

Natural rights relating to the flowing water are divisible into those concerned with the natural quantity of the water, *e.g.*, its diversion, obstruction and abstraction, and those concerned with the natural quality of the water, *i.e.*, its purity and pollution.

Natural rights in respect of quantity

A riparian owner has a right to the reasonable use of the water for his domestic purposes and for his cattle, without regard to the effect which that use may have in case of a deficiency of water upon proprietors lower down the stream. He also has a right to the use of the water for any purpose, or what may be deemed the extraordinary use of it, provided he does not thereby interfere with the rights of other proprietors either above or below him: *Miner* v. *Gilmour* (1859) 12 Moo. P.C. 156. This also holds good as regards tidal rivers: *Lyon* v. *Fishmongers' Co.*, *supra*.

"Domestic purposes" extend to culinary purposes, to purposes of cleansing and washing, feeding and supplying the ordinary quantities of cattle and so on: *A.-G.* v. *Great Eastern Railway Co.* (1871) 35 J.P. 788. An "extraordinary use" includes purposes of manufacture (*Dakin* v. *Cornish* (1845) 6 Ex. 360), diversion of a watercourse for irrigation so long as the running stream is not exhausted (*Embrey* v. *Owen*, *supra*), or the damming of a river in connexion with a mill: *Belfast Ropeworks* v. *Boyd* (1881) 21 L.R. Ir. 560. An extraordinary use to be exercised lawfully must be a reasonable user and the purposes for which the water are taken must be connected with the riparian tenement: *Swindon Waterworks Co.* v. *Wilts. and Berks. Canal Co.* (1875) 40 J.P. 804, where it was held that the right of riparian owners to collect water from a stream into a permanent reservoir to supply an adjoining town was not a reasonable use of the water. In *McCartney* v. *Londonderry Co.* [1904] A.C. 301, the court decided that a railway company whose line crossed a river were not entitled to collect water from the river for working their locomotives, this not being a purpose connected with the land where it crossed the stream.

A riparian owner may use the water of a stream for purposes of irrigation, so long as he returns the water to the stream diminished no more than is inevitable by absorption and evaporation (*Embrey* v. *Owen*, *supra*); but he must not delay the passage of the water so as to injure the natural rights of a lower riparian owner: *Sampson* v. *Hoddinott* (1857) 21 J.P. 375.

These principles regulate the rights of land owners in respect of water flowing in known and defined channels, whether upon or below the surface of the ground, but have no application to underground water which merely percolates through the strata in no known channels: *Chasemore* v. *Richards* (1859) 23 J.P. 596. Whether the same principles apply to artificial channels depends (*a*) on the character of the watercourse, such as if it is temporary or permanent; (*b*) the circumstances under which it was presumably created, and (*c*) the mode in which it has been used and enjoyed: *Baily & Co.* v. *Clark Son, & Morland* (1902) 86 L.T. 309.

Pollution and natural rights of purity

A riparian owner has a natural right to the flow of the stream past his land without sensible alteration in its character or quality (*Young & Co.* v. *Bankier Distillery Co.* (1893) 58 J.P. 100), and the water must not be contaminated by trade waste discharged to the stream by a factory (*Crossley* v. *Lightowler* (1867) 16 L.T. 438) or by sewage from a town: *Jones* v. *Llanrwst U.D.C.* (1911) 75 J.P. 68: *cp.* also the post-war cases of injunction, such as *Pride of Derby Angling Association, Ltd.* v. *British Celanese, Ltd.* [1953] 1 All E.R. 179; 117 J.P. 52. This rule also applies to underground water (*Hodgkinson* v. *Ennor* (1863) 27 J.P. 469) and to artificial watercourses which are of a permanent nature or in respect of which riparian rights have been acquired: *Sutcliffe* v. *Booth* (1863) 27 J.P. 613. Pollution is, in itself, an unlawful act and a nuisance, and differs from the obstruction or diversion of a stream, which when done in a reasonable manner and on the person's own property is a lawful use of property: *Hodgkinson* v. *Ennor*, *supra*.

It is no answer for a defendant to show that the water which he has polluted is also polluted by other persons (*St. Helen's Smelting Co.* v. *Tipping* (1865) 29 J.P. 579), and where an injury has been done to a private person's rights, he is entitled to damages, even nominal damages, and where an injury is apprehended an injunction will be granted against the person in default: *Nixon* v. *Tynemouth Union* (1888) 52 J.P. 504, D.C. Pollution which causes annoyance to the public in general is a public nuisance, and the person responsible may be indicted for a misdemeanour (*R.* v. *Bradford Navigation Co.* (1865) 29 J.P. 613), or an injunction applied for by the Attorney-General: *A.-G.* v. *Shrewsbury Bridge Co.* (1882) 46 L.T. 687.

The pollution of water has been the subject of many statutes, both local and general, designed to prohibit or restrict pollution, including the Rivers (Prevention of Pollution) Act, 1951 (concerned with river pollution), part II of the Public Health Act, 1936 (sewage disposal), the Public Health (Drainage of Trade Premises) Act, 1937 (disposal of trade wastes), and a host of miscellaneous legislation ranging from fisheries and the protection of water supplies to diseased animal carcasses and atomic waste.

So far, natural riparian rights have been discussed, but natural rights of water may be altered or enlarged, when they are known as acquired rights or easements.

Acquired rights (*Easements of water*)

A riparian owner may by usage acquire a right to use the water in a manner not justified by his natural rights, but the acquired right has no operation against the natural rights of another riparian proprietor, unless the use by which it was acquired affects the use that the land owner has of the stream, or his power to use it, so as to raise the presumption of a grant and so render the tenement above or below a servient tenement: *Sampson* v. *Hoddinott*, *supra*. Examples of prescriptive rights are the right to go on a neighbour's land to open lock gates or to repair the banks or to dam back water. An easement may be acquired to obstruct and divert the waters of a stream, *e.g.*, the use of a mill water-wheel which requires a dam or mill-head to pen back the water (*Saunders* v. *Newman* (1818) 1 B. & A. 258), so long as the diversion or obstruction is not materially altered or increased to the detriment of the servient owner: *Bealey* v. *Shaw* (1805) 6 East. 208. Easements of water may arise by express or implied grant, by devise, under custom or statute, or by prescription either at common law or under the Prescription Act, 1832.

An easement may also be acquired to pollute the waters of a stream, as, for instance, the claim by custom or prescription to use a stream for washing ore and carrying away rubble discharged in working a mine (*Carlyon* v. *Lovering* (1857) 1 H. & N. 797), or discharging polluted water: *Wright* v. *Williams* (1836) 1 M. & W. 77. But such a right can only be gained by a continuous and perceptible amount of injury to the servient tenement for 20 years (*Murgatroyd* v. *Robinson* (1857) 7 E. & B. 391) and once a right to pollute has been acquired the fouling

must not be appreciably increased to the detriment of the servient tenement: *M'Intyre Brothers* v. *M'Gavin* [1893] A.C. 268. There can be no prescriptive right to pollute waters in contravention of a statute, thus a prescriptive right to foul a stream cannot be acquired after the coming into operation of the Rivers Pollution Prevention Act, 1876 (*Butterworth* v. *West Riding of Yorkshire Rivers Board* (1909) 73 J.P. 89), or perhaps after the Local Government Act (1858) Amendment Act, 1861: *Legge & Sons, Ltd.* v. *Wenlock Corporation* [1938] 1 All E.R. 37; 102 J.P. 93.

MORE ON BUDGETS

" Well guessed, believe me "—*Henry VI*

Chairmen of finance committees and their financial experts are in one respect at least akin to that other body of forecasters engaged in what we believe is known to its intimates as the rag trade, namely the fashion designers: both bodies are greatly concerned to ascertain the true and acceptable shape of things to come, and both have their seasons of meditation and subsequent prophecy. While the consequences of selecting the wrong line may be less disastrous personally to a finance chairman than to a fashion leader the implemented recommendations of the former would affect a world altogether larger than that familiar to the devotees of *haute couture*, and he has a great responsibility accordingly.

The season of investigation and meditation has opened and we are bound to observe that the signs and omens do not indicate the possibility of a reduction in the total of rates demanded, although the effects of the revaluation may well be to reduce rate poundages and to swing the incidence of charge rather more heavily on to commercial properties in favour of householders. Prices in general are not falling and the price of labour continues its upward rise: for example, the shortening of the police working week (in itself a costly decision) has been closely followed by an application for an increase of pay of 20 *per cent.* which, if granted, would probably cost over £10 million annually. Teachers' pay has been revised; also the cost of equal pay for women is particularly heavy in this profession and continues its yearly growth. The claim of the Staff Side of the National Joint Council for Local Authorities' Administrative, Professional, Technical and Clerical Services is still under consideration and if granted in full it would cost £13 million a year: such an outcome is unlikely but it is equally improbable that the staffs will be sent away entirely empty handed. As staff costs account for more than half of all local authorities' expenditure it seems that local government will not lighten the burden of rates and taxes in 1956/57. But, it may be asked, what of Chancellor Butler and his squeeze: will he not succeed in curbing local expenditure? We believe that monetary stringency is unlikely to achieve anything very spectacular in its present form and as local authorities are at present constituted. In the words of the notice which adorns the barrow boy's fruit: " You can't squeeze me until I'm yours ": while local authorities remain free from complete central domination many will follow paths of their own choosing, and if Mr. Butler tries to credit-squeeze them his efforts will cause little pain and in a large number of cases will pass almost unnoticed, the simple reason being that only a minor part of the total expenditure of great numbers of authorities falls upon rates. It is still a popular fallacy, shared by some sections of the press, that the expenses of local government are mainly paid out of rates, but of course this is not so: over the country as a whole the figures for 1952/53 show the following division:

	£ *thousand*
Income from	
Government Grants	384,443
Rents, etc.	168,433
Trading services	1,525
	554,401
Rates	350,894
	£905, 295

Consider an individual case, that of an education authority building a new school costing, say, £176,000: the difference in annual cost between a four *per cent.* and a five *per cent.* interest rate over a redemption period of 20 years is about £1,174 or over the whole period a sum of £22,870. In every education authority, however, 60 *per cent.* of loan charges will be paid by government grant and in some authorities, when equalization grant is received, as much as 80 *per cent.*: in such circumstances an authority anxious to provide services is unlikely to be deterred by the additional rate cost of financing its capital expenditure. Furthermore, we understand that there is under review some modification of the policy whereby certain government departments limit the amount of grant-earning capital expenditure which can be charged to revenue, and if a measure of relaxation should be allowed, for example, on education expenditure, it would be quickly taken advantage of, thus lessening again the effect of higher loan interest rates. We believe that if Mr. Butler wishes to reduce local government expenditure he will have to rely on a system of physical controls, and if so the instrument is ready to his hand in continuance of the post-war system whereby local authority capital programmes in general need governmental approval before work is commenced.

In our note on p. 620 of our issue of September 24, last, we referred to some recommendations for securing economy made by the Ray Committee,* and now mention one other, namely the question of private Bill legislation. Those who have promoted private Bills know how expensive a procedure it is and the committee had this to say on the subject: " We do not lightly contemplate any restriction on the right of local authorities to approach Parliament whenever they deem it necessary, either to promote or defend their interests. Moreover, the whole subject has recently been under consideration by a Select Committee of the House of Commons, who recommended amongst other things that, with a view to diminishing the bulk of local legislation, Public General Bills should be introduced and passed approximately every five years so as to embody in the general law and make of general application powers granted by Parliament as a matter of course in local Acts. We have noted, however, a number of instances where local authorities

*Report of the Committee on Local Expenditure, Cmd. 4230, 1932.

have promoted private Bills with rather surprising frequency. For example, one local authority has obtained 22 local Acts since 1900, another 18 (nine in eight years), another 17 (seven in eight years) and another 15. Yet another has obtained seven in the last nine years. Circumstances no doubt differ and each local authority has its own problems, but it seems to us that it ought to be possible to avoid such frequent application to Parliament without impairing the efficiency of local administration." The useful recommendation of the Select Committee has not been adopted: instead, a private member who was lucky in the ballot for private members' Bills undertook the task once and his efforts resulted in the Local Government (Miscellaneous Provisions) Act of 1953. While giving full marks to the member for so utilizing the opportunity which luck had given him it will be readily agreed that a job which needs to be done at regular intervals with government backing should not be left to the hazards of the private members' ballot. The recommendations of the Select Committee should be implemented.

There is another matter, however, where much of local government can learn from central government practice, and this is in relation to the subsequent check of estimated figures against actual expenditure and income. Too often local authorities take little interest in exercises of this kind, directing their attention to the future rather than the past. In this they differ from Parliament where if departmental final accounts disclose expenditure in excess of estimates (including supplementary estimates) parliamentary authority by way of what is known as Excess Votes must be obtained; and such moneys are not voted until after thorough examination and report by the Public Accounts Committee. In a recent report the committee recommended additionally that surpluses arising from over-estimating should be looked on as equally reprehensible. There is undoubtedly scope for improving the accuracy of local authority estimating, as so many sets of final accounts demonstrate, and many of the errors disclosed fall into the second category. There are probably two main and continuing reasons for over-estimating, one that departmental heads expect a cut from the finance committee and provide accordingly; the other that they wish, quite naturally, to provide for every contingency which may arise. To these may be added under post-war conditions the tendency to be over optimistic about the rate of progress which will be achieved in relation to new capital works. In these circumstances application of Public Accounts Committee procedure, including blunt criticism of offenders who fail to show good reason for their mistakes, could result in some very useful reductions of local rate levies.

WEEKLY NOTES OF CASES

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Ormerod and Glyn-Jones, JJ.)

R. *v.* RECORDER OF GRIMSBY. *Ex parte* FULLER

October 18, 1955

Quarter Sessions—Appeal against conviction—Document setting out previous convictions put before court during hearing—Real likelihood of prejudice—Certiorari—Documents to be placed before quarter sessions.

MOTION for order of *certiorari*.

The applicant, Fuller, was convicted at Grimsby borough magistrates' court of being found in an enclosed place for an unlawful purpose, contrary to s. 4 of the Vagrancy Act, 1824, and appealed to quarter sessions against conviction. At the hearing of the appeal he stated in evidence that he had gone to the place in question to look for work, and in cross-examination he was asked why he had not accepted work later. The recorder asked whether he had been working just before the return day originally fixed for the hearing of the summons and the clerk of the peace then handed to the recorder the document prepared by the police containing the history and antecedents of the applicant, calling his attention to a passage in which it was stated that the applicant had been arrested on a warrant and was in custody at that time. The recorder marked the passage. In the next line after that passage it was stated: "Fuller has previously been convicted as follows," and then 14 previous convictions were set out, 11 of which were on the same page of the document. After the recorder had announced that he dismissed the appeal against conviction, he asked for evidence with regard to the applicant's character, and this was given by a police officer in the usual manner.

Held, that, though *certiorari* would not be granted for every irregularity in the course of a hearing either at petty or quarter sessions, *certiorari* would issue where there was a real likelihood of prejudice. Here the court could not assume that the recorder had not become aware of the applicant's previous convictions before he gave his decision, and the *certiorari* would, therefore, issue, and the court would order the conviction to be quashed.

Per curiam: In the case of an appeal against conviction care must be taken to see that the document containing the antecedents of the prisoner is not before quarter sessions before the decision of the court is announced. The safe rule to apply is that nothing should be before quarter sessions which could not be given to a jury. The only documents which should be placed before the court prior to the decision are the conviction, the notice of appeal, and copies of exhibits intended to be proved, to the admissibility of which no objection has been taken.

Counsel: *J. Malcolm Milne* for the applicant; *T. R. Fitzwalter Butler* for the clerk of the peace and the chief constable of Grimsby.

Solicitors: *J. H. Milner & Son*, for *Young & Co.*, Grimsby; *John Barkers*, Grimsby; *L. W. Heeler*, town clerk, Grimsby.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

L. *v.* M. AND ANOTHER

Adoption—Unreasonable refusal of consent—Refusal by father from motives of spite—Adoption Act, 1950 (14 *Geo.* 6, *c.* 26), *s.* 3.

CASE STATED by Middlesex justices.

At Uxbridge magistrates' court the justices made an adoption order, under s. 3 of the Adoption Act, 1950, in respect of a girl in favour of her mother and the mother's present husband on the ground that the consent of the child's father to the adoption order had been unreasonably withheld.

The child was born in February, 1946. In January, 1947, her parents separated. Later, the mother obtained a decree *nisi* of divorce, which was made absolute in June, 1953, she being given the custody of the child. She did not ask for maintenance. From 1947 to 1954 the father, who during that period served a sentence of four years' imprisonment in respect of which he obtained full remission, did not see or write to the child and never sent her any presents. When asked for his consent to the adoption order, he said to the mother: "You have had your own way over the divorce . . . You are not going to have it over this." The justices were of opinion that his reason for opposing the order was not because he desired to exercise parental rights, but because he desired to spite the mother, and that his consent had, therefore, been unreasonably withheld. The father appealed to the Divisional Court.

Held, that the justices had applied their minds to the right considerations, and, there being evidence on which they could act as they did, the Divisional Court would not interfere. The appeal must, therefore, be dismissed.

Counsel: *Frisby* for the father; *Widgery* for the mother and her present husband.

Solicitors: *A. V. Hawkins & Co.*, Southall; *Champion & Co.* for *Turberville Smith*, Uxbridge.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

NATIONAL ASSISTANCE BOARD *v.* MITCHELL

October 14, 1955

National Assistance—Illegitimate children—Claim against father by board in respect of assistance given to mother—Bastardy Laws Amendment Act, 1872 (35 *and* 36 *Vict.*, *c.* 65), *s.* 3—*National Assistance Act*, 1948 (11 *and* 12 *Geo.* 6, *c.* 29), *s.* 44 (2).

CASE STATED by a metropolitan magistrate.

At Woolwich magistrate's court applications were made by the appellants, the National Assistance Board, under s. 44 (2) of the

National Assistance Act for summonses to be served on the respondent, James Bryce Mitchell, under s. 3 of the Bastardy Laws Amendment Act, 1872, to answer complaints alleging that he was the father of twin children born on September 30, 1947, and that assistance had been given by the board to the mother in respect of the children under part II of the National Assistance Act in October, 1954.

The mother of the children was living apart from her husband. She had given birth to twins in 1947 and had named her husband as the father, but the magistrate found that the mother and the respondent had intercourse before the birth and the respondent acknowledged the children as his own. Although he signed a form admitting paternity of the children and agreeing to pay 8*s.* a week he never paid it and the board wished to obtain an order to recover the expense of maintaining the children. The magistrate held that s. 44 of the National Assistance Act, 1948, did not enlarge the basis on which a mother could obtain an order under s. 3 of the Bastardy Laws Amendment Act, 1872, but merely determined the time limits for applications made by the National Assistance Board; that the requirements of s. 3 of the Act of 1872 were not fulfilled in that the mother could not have obtained an order; and, therefore, the board could not obtain such an order.

By s. 44 (2) of the National Assistance Act, 1948: " If no affiliation order is in force, the board . . . may within three years from the time when the assistance was given . . . make application to a court of summary jurisdiction having jurisdiction in the place where the mother of the child resides for a summons to be served under s. 3 (3) of the Bastardy Laws Amendment Act, 1872."

Held, that the right given to the board under the Act of 1948 was independent of the mother's right, and that the board were entitled to show, if they could, that the children were bastard children and that the mother was a single woman within the meaning of the authorities. The case must, therefore, be remitted to the magistrates with a direction to continue the hearing.

Counsel: *Winn* for the appellants. The respondent did not appear.

Solicitor: *Solicitor, National Assistance Board.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MILLER, LTD. *v.* BATTERSEA BOROUGH COUNCIL

Food and Drugs—Food unfit for human consumption—Bun with metal in it—Food and Drugs Act, 1938 (*1 and 2 Geo. 6, c. 56*), *s. 9.*

CASE STATED by a metropolitan magistrate.

At the South-Western magistrate's court an information was preferred by the respondents, the Battersea borough council, against the appellants, J. Miller, Ltd., alleging that on January 14, 1955, at 48 Northcote Road, Battersea, they sold a certain article of food, to wit, a chocolate coated cream-filled cake intended for, but unfit for, human consumption in that it contained a piece of metal, contrary to s. 9 of the Food and Drugs Act, 1938.

On the date in question a customer bought at the appellants' shop four chocolate cream buns which, when sold, were intended for human consumption. One of them contained, at the time it was sold, a piece of metal, which the customer got into his mouth.

The appellants contended, *inter alia*, that the bun itself was perfectly sound and that the proceedings should have been brought under s. 3 of the Act which created an offence in the sale of food which was not of the quality of food demanded by the customer. The magistrate was of the opinion that, " the bun, as a whole, was unfit for human consumption " under s. 9. He accordingly convicted the appellants and imposed a fine of £10, and the appellants appealed.

Held, that, although an offence under s. 3 could be established by showing that there was extraneous matter in food sold, food was not shown to be unfit for human consumption within s. 9, which dealt with putrid food, merely because it contained a piece of extraneous matter which had no effect on the composition. The appeal must, therefore, be allowed and the conviction quashed.

Counsel: *Burge* for the appellants; *Wrightson* for the respondents.

Solicitors: *Claud Barker & Partners; Sharpe, Pritchard & Co.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 84.

A WARNING TO FARMERS

A farmer carrying on business in Suffolk was the defendant at Mildenhall magistrates' court on September 30, last, when it was alleged that he had contravened arts. 5 and 10 of the Sugar Beet Eelworm Order, 1952. The particulars of the charge alleged that between May 1 and July 1 of this year he had sown brussels sprouts on certain land at Lakenheath, within an infested area, being land on which a crop of cabbage had been grown during the preceding 24 months.

For the prosecution, which was initiated by the Ministry of Agriculture, it was stated that sugar beet eelworm, which some years ago almost brought the beet sugar industry in Germany to a standstill, was increasing in West Suffolk. The prosecutor said that the creature, about the size of a pin-head, lived underground and attacked not only sugar beet but also other root vegetables, the cabbage family and even mustard and cress. If present in the soil in small numbers it did no great harm but if left it increased rapidly. The only method of dealing with the eelworm, which lived underground, was to starve it out, and accordingly it was essential for a rotation of crops to be grown so that susceptible crops were not grown more than once in three years.

The defendant, said the prosecutor, was, with other farmers, reminded by the county agricultural committee of susceptible crops and as to which fields should not be used for them in the coming season. The defendant had received a reminder about a nine-acre field at Lakenheath which held cabbage in 1953. Notwithstanding this fact, brussels sprouts were sown this year.

For the defendant, who pleaded guilty, it was stated that of the 480 acres farmed by him, 246 were in the infested area and that the sowing of the brussels sprouts this year was purely an oversight.

The defendant was fined £5 and ordered to pay £2 2*s.* costs.

COMMENT

By art. 5 (1) of the order it is forbidden to sow or plant a large range of vegetables including cabbage, cauliflower, brussels sprouts, etc., on any land within an infested area on which any of the prohibited crops have been grown during the preceding 24 months. By art. 10, offenders may be punished in the case of a first conviction with a fine of £10, and with a fine of £50 in the case of a second or subsequent conviction.

(The writer is greatly indebted to Mr. V. D. M. Hall, clerk to the Lackford justices, for information in regard to this case.)

R.L.H.

No. 85.

AN INFRINGEMENT OF THE FINANCE (NEW DUTIES) ACT, 1916

On October 6, last, Leicester city magistrates considered the provisions of s. 1 of the Finance (New Duties) Act, 1916, when a 25 year old jazz-band leader appeared before them to answer five charges of allowing persons to be admitted to an entertainment and taking admission money but failing to pay entertainment duty.

For the prosecution a superintendent of police stated that he went into the lounge of a public house in the city on an upper floor just before 10 *p.m* one evening. Music of a " violent jazz type " was being played and on going upstairs the superintendent was charged 2*s.*, as were other police officers and a customs officer who visited the premises at the same time. One hundred and thirty-seven young persons between the ages of 18 and 20 were found in the room, all of whom had paid for admission and were consuming drink. When the band was not in session, said the superintendent, there would normally be between 30 and 50 people in the lounge, and there was no doubt that the band attracted a great many people to the house.

The superintendent stated that the licensee had not received any payment for the musical proceedings and did not know that money was being taken at the lounge door. A card was on a table near the entrance saying that no charge for admission was permitted but suggesting a contribution towards expenses. In large letters was written " 2*s.*"

The prosecution made it clear that it was not alleged that there had been any improper or unseemly behaviour in the lounge, nor was any dancing taking place. The sole object of the music was

said to be to attract customers to the house who bought their drink in a bar downstairs and carried it upstairs for consumption whilst listening to the band. The premises were licensed by the justices for music.

For the defendant, who pleaded guilty, it was said that he was the leader of a group of musicians who played "New Orleans jazz"—a type of music very popular with the younger people. The defendant claimed that he had made no personal gain and said that the money collected at the door was applied to the provision of the musical instruments used by members of his band, all of whom were enthusiastic devotees of "New Orleans jazz."

The chairman, in imposing a fine of £5 and ordering payment of £2 2*s*. costs on each charge and £1 8*s*. 6*d*. duty—a total of £36—expressed anxiety that there seemed to be little or no supervision of what took place by the licensee. The chairman also commented that the number of persons attracted to the room in question was large having regard to the size of the room, and that it seemed doubtful whether, in the event of a sudden emergency, the safety of those present was properly provided for.

COMMENT

The defendant in this case was not heavily punished, for s. 1 provides for payment of a maximum penalty of £50 in respect of each person admitted for payment to a place of entertainment without entertainment duty being paid over to the Commissioners.

It is easy to understand the anxiety expressed by the chairman as to the lack of supervision by the licensee, who apparently was not even aware that a collection was being taken at the door.

It is one of the curious features of licensing practice in this country that when licensing justices are considering plans for new premises or for alterations to existing premises, they give most careful consideration to the question of whether there will exist adequate supervision of ground-floor bars both by the licensee and by the police, but in all too many cases no consideration is given to the question of supervision of club rooms or lounges on the first floors of licensed premises. These club rooms are often reached by staircases at the rear of bars so that there is no opportunity for the police to make a snap inspection of the room they wish to supervise.

It seems common sense to assume that if a licensee is willing for infringements of licensing law to take place on his premises, it is at least probable that he will endeavour to secure that the breaches, of whatever nature they may be, take place not on the ground floor where they may be detected in a trice by a vigilant policeman, but in an upstairs club room which it is quite impossible to supervise from the street.

(The writer is greatly indebted to Mr. W. E. Blake Carn, clerk to the Leicester city justices, for information in regard to this case.)

R.L.H.

PENALTIES

Lewes—October, 1955. (1) Having an offensive weapon in a public place without lawful authority. (2) Drunk and disorderly. (1) Fined £20. (2) Fined £2 and to pay £1 15*s*. costs. Defendant, a 19 year old tiler, asked a stranger for a match at a dance; when his request was queried he drew a sheath knife and pointed the blade at the stranger. Later in the evening he produced the knife again and threatened another man.

Brighton—October, 1955. Having an offensive weapon in a public place without lawful authority. Fined £20. Defendant, a 24 year old plumber, engaged in a fight at a dance, drew a long-bladed stiletto and aimed several blows with it.

Brighton—October, 1955. Stealing a clock and a pair of socks. Two months' imprisonment. Defendant was fined £5 by the Brighton magistrates for stealing a clock; he could not pay the fine so he went to the same store from which he had stolen it and stole the same clock again.

Nottingham—October, 1955. Causing unnecessary suffering to a four year old terrier. Fined £10 and disqualified from keeping a dog for life. Defendant, a 33 year old foreman, clubbed the dog with an iron bar, tied a thick 10 *ft*. long rope round its neck and threw it down a 15 *ft*. disused shaft in a brickyard, and put a concrete slab over the shaft. Eight days later the dog was heard whimpering. A youth retrieved it and the dog recovered. Defendant who had lost his job as a result of the prosecution, was told by the court he would have been sent to prison but for his wife and children.

Aberdare—October, 1955. (1) Assaulting the police (two charges). (2) Drunk and disorderly. (1) Fined a total of £14. (2) Fined £1. Defendant, a university undergraduate, struck police officers when being arrested, and later struck a sergeant a violent blow on the jaw with his right fist; he later kicked the sergeant in the groin and when the latter fell to the floor he stamped on him until he lost consciousness.

Nottingham—October, 1955. Assault. Fined £5. Defendant, a local signalman, staggered in a drunken condition into his box nearly an hour late. When told to go home he assaulted his colleague.

Staple Hill—October, 1955. (1) Using premises in connexion with a lottery. (2) Causing persons to distribute lottery tickets (13 charges). Fined a total of £140, to pay 20 guineas costs. Defendant, after being warned by the police that a football pontoon he was running was illegal, continued to run it under the guise of a local old age pensioners' association. The pensioners' branch had 150 members. Defendant sold upwards of 3,700 tickets each week at 1*s*. each; the old age pensioners got five *per cent*. of the income, defendant took 10 *per cent*.

MISCELLANEOUS INFORMATION

BOARDING-OUT OF CHILDREN

New regulations have been made by the Home Secretary, to operate from January 1, 1956, as to the boarding-out of children by local authorities and also, for the first time, of those boarded-out by voluntary organizations. In accordance with the generally accepted policy of encouraging boarding-out the new regulations do not provide, as previously, for any statutory limitation of the number of children who may be in a foster home. This is, therefore, left to the discretion of the bodies concerned remembering, as suggested in the explanatory memorandum issued by the Home Office, that the ages of the children in any household should be such as to give the appearance of a natural family. The expression "boarding-out" refers sometimes to the procedure by which a child is placed in a foster home and begins to live there, and sometimes to the fact that he has been placed in a foster home and is continuing to live there. A child may, therefore, be boarded-out for the purpose of the regulations even though no payment is made by the local authority or voluntary organization to the foster parents. A child may not be boarded-out outside England and Wales, unless the special circumstances make this desirable, for example, to allow a child to be boarded-out with relatives or to remain with foster parents who are going overseas for a tour of duty. But even then the safeguards specified in the regulations must be observed.

A duty is imposed on a local authority or voluntary organization to remove a child from a foster home if it appears that the boarding-out in that household is no longer in his best interests. In an extreme case where the visitor supervising the welfare of the child finds conditions which in his opinion endanger the child's health, safety, or morals, the visitor may at once remove the child.

Experience has shown that some suitable foster parents who are not prepared to have a child boarded-out with them continuously are willing to take a child for a short holiday, or to provide a foster home during the school holidays for a child from a boarding school. To facilitate such arrangements a stay for a period not exceeding 21 days for the purpose of a holiday has been excluded from the scope of the regulations. Special arrangements are, however, prescribed where the stay covers the whole of the school holidays. There has sometimes been criticism that the fact of a child being boarded-out has not always been known to other departments of the same authority but only to the children's department. It is pointed out in the explanatory memorandum that in order to secure that full use of the appropriate local services, it is desirable that all the local authority departments who may be concerned with his welfare should be informed of the arrival in the area of a boarded-out child.

DUDLEY PROBATION REPORT

Although it is generally thought inadvisable to repeat probation, lest it should give the impression that an offender can, in the current phrase, get away with it several times, there are undoubtedly some cases in which a second chance on probation is justifiable and proves successful. In his report for 1954, Mr. B. Bissell, probation officer of the county borough of Dudley, refers to four cases in which a period of probation which ended satisfactorily was followed by a lapse and, a second period of probation having been ordered, there was no further lapse. Mr. Bissell advocates a second period of probation being tried, and we agree that if cases are carefully selected, this is sound policy. We are not equally satisfied with his statement that the fact that only 5·5 *per 'cent*. of those placed on probation came again before the court during the year emphasizes the value of probation. A much more reliable test is what happens after the period of probation is over, and many reports contain useful statistics for a five-year or

ten-year period. Mr. Bissell is right in pointing out that it is often found that men with records respond to probation, and that if such cases are chosen with discrimination the results may be such as to justify the leniency shown.

On after-care he says "during the year I supervised 11 ex-borstal lads and only one proved unsatisfactory. This speaks volumes for the excellent training and discipline these lads receive at the various borstal training centres."

What is going on in the way of preparing long-term prisoners for release and rehabilitation is not so well known as it deserves to be. Here is Mr. Bissell's impression: "In November of 1954 I was privileged to visit Bristol Prison and investigate the scheme of 'Gradual Rehabilitation' of long-term men from Parkhurst Prison. These men, specially selected, leave Parkhurst for Bristol and live in a hostel within the prison walls. They go out to work daily and return to prison in the evening. After tea they are allowed out in Bristol until 10 *p.m.* They pay board and often save a good sum of money so that on leaving the hostel on licence after about 13 weeks' residence, they are able to take home quite a sum of money, thus giving them an air of legitimate independence. The scheme, the first of its type in this country, is thoroughly justifying itself. The too sudden transition from imprisonment to freedom can have an unbalancing effect and is sometimes responsible for an early recall. This 'Bristol' scheme is an effort, so far very successful, to prevent that."

Mr. Bissell acknowledges that he has learned many lessons in life from the probationers and others with whom he has come into contact: lessons of loyalty, cheerfulness under handicaps, and courage. That is worth saying.

In her separate report, Miss McShee deals with the difficulties of young married couples who part for want of proper accommodation and expresses the opinion that the work of reconciliation would fall considerably if the housing problem was not so acute.

SPOFFORTH HALL

Spofforth Hall, like the Mayflower at Plymouth, is a home for the training of mothers who have for some reason or other failed to look after home and children adequately. It was established under the auspices of the Elizabeth Fry Memorial Trust, and the third annual report has now been issued. It was, says the report, a project founded in faith by a few Friends and other supporters with slender resources, but with a conviction that they were setting their hands to a task that should be done. Results have shown that their faith has been amply justified. Spofforth Hall is full and likely to remain so.

The whole trend of official policy towards families in difficulties has undergone a remarkable change in the past few years and, says the report, the committee responsible for Spofforth Hall is glad to have played some small part, with other and older organizations, in demonstrating the possibilities of constructive help to families in difficulties.

Whereas formerly the majority of families dealt with came to Spofforth Hall on the recommendation of the medical officers of health, recently the majority of mothers have been charged before the courts with the neglect of their children and have been placed on probation, with a condition that they reside at a recognized training centre for four months. One result has been that payments out of public funds are on a lower scale and much below the actual cost of maintenance. This is a matter which will no doubt be reviewed by the authorities.

Although it is the mother who comes to Spofforth Hall, it is true that the father also may be at fault. "During the year, too, progress has been made towards establishing closer relationships with the fathers of the families who come to Spofforth Hall. Some have stayed repeatedly at Spofforth Hall, and to give constructive help to them is sometimes as great a concern to the warden as the care of the mothers themselves."

The all important matter of after-care has been kept in mind. On this the report states: "It is encouraging to be able to record that, so far, all the families who have been to Spofforth Hall are, with varying degrees of success, maintaining their own homes and families. The committee is impressed with the care taken by sponsoring authorities to supervise families on their return home, and is grateful to those who prepare such helpful and detailed reports on their progress."

MENTAL TREATMENT WITHOUT FORMALITY

The evidence submitted by the South West Metropolitan Regional Hospital Board to the Royal Commission on the law relating to mental illness and mental deficiency included an account of an interesting experiment started two years ago, whereby parts of three mental hospitals were re-designated for the admission of non-statutory patients. The procedure for selection of cases for admission varies to some extent because of the different types of accommodation available. The Ministry of Health specified that as far as possible "informal" and voluntary admissions were not to be mixed. The physician superintendents are, however, unanimous that it would be an advantage to allow admission of non-statutory patients to any part of the hospital. At first, some difficulties were experienced as regards discipline of the patients, who tended to regard themselves as "special hospital patients" in more senses than was the original intention of the phrase. When, however, the position was explained to the staff and patients concerned, discipline improved and has been as good as in any other part of the hospital, or as that in a general hospital. The average length of stay of these patients has been six to eight weeks, so a constant flow of patients is maintained.

It was found that the majority of the patients admitted during the first year would have been equally willing to enter as voluntary patients, though they frequently expressed approval of the informality of their admission to the special units. Similarly, appreciation of the informal admission is frequently expressed at out-patient clinics, when the question of admission to hospital is discussed. A minority of the admissions stated that they would not have been willing to enter hospital under the Mental Treatment Act, but they were willing to accept treatment in the special units. Patients who intimated that they would have been willing to become voluntary patients frequently presented themselves for treatment at a much earlier stage than they would otherwise have done, and general practitioners seem more ready to refer psychiatric patients for informal treatment. A few cases have arisen in which the patient wished to discharge himself, contrary to the views of the medical staff. If it was considered that the patient had become certifiable, arrangements have been made for the duly authorized officer to take him to the observation ward pending certification proceedings.

In view of the great success of the experiment the arrangements are being extended to other hospitals in the region.

THE INNS OF COURT

We have received a filmstrip of the Inns of Court, with a written commentary, prepared by Educational Productions, Ltd., East Ardsley, Wakefield, Yorkshire. The 46 frames of the filmstrips are of such familiar subjects as Middle Temple Hall, the Record Office, and the Royal Courts of Justice, and the commentary is fairly comprehensive, and is well-written. As an aid to visual education, its value is obvious—yet it occurs to us that its use need not be limited to schools. Many of our readers are frequently asked, often at short notice, to address discussion groups, etc., on the subject of the legal profession—and we think to them the filmstrip could be of some value as providing a not too elementary introduction to the subject.

INTERNATIONAL HOSPITAL CONGRESS

The "Mental well-being of patients" was the main theme of the International Hospital Congress at Lucerne earlier this year, which was attended by 550 delegates from 30 countries, including some from regional hospital boards and other hospital authorities in this country. Twenty-four papers were submitted as a preliminary to the discussion of various aspects of the subject. Fr. Agostino Gemelli, O.E.M., rector and professor of psychology of the Catholic University of the Sacred Heart, gave a general report on the attitude of society and of the individual towards illness as factors determining the role of the hospital. In emphasizing that every human being must be treated as a human being, he said that admission to hospital is sometimes regarded as a terrible misfortune and that this attitude is justified where the patient is just a number, subjected to diagnostic procedures and medical treatment without explanation as to the reasons for those procedures. He suggested that one of the main features of hospitalization is the patient's isolation from his "ordinary world." In the course of an exhaustive paper, Dr. L. G. Moser, director of the "Burgerspital," Basle, said the patient is more important than money, and, secondly, the administrative staff must realize that they are the servants of everybody, *i.e.*, the patients and visitors. Patients who are in hospital for the first time should be informed of everything that a patient must know of the hospital organization. For the mental well-being of the patient, the hospital building is less important than the atmosphere that prevails within it. In his view, admittance of patients by the doctor should take place in a separate room and should arouse the feeling in the patient that he is important and that everything possible will be done for him.

M. Hosdain, a Belgian architect, said an effort must be made to create an atmosphere of peace and tranquility around the patient but he must be provided with some distraction or occupation to prevent a feeling of isolation. His environment must be as comfortable and beneficial as possible. Another architect, Herr Leupen of Amsterdam, speaking on the hospital patient's environment and the creation of the best possible working conditions for the staff, suggested that the first impression gained by a patient when entering the hospital was very important; he should never have to wait for registration in a crowded hall or busy corridor; he should be received in a quiet and

friendly room. He thought it was well to remember that the patients expect, more than anything, to be beneficially taken care of and a speedy recovery. The patient should never experience the hospital as a "massive medical factory," in which he is only a case marked X. Dr. H. J. Hugo, medical director of hospital services, Transvaal, South Africa, dealt with the influence on the patient of the organization of the hospital staff and asked "of what good is an organization if it does not integrate promotive and curative health services and if it does not integrate home and hospital service; if it does not organize district nursing services radiating from the hospital; if it does not give attention to the long-term patient, the chronic diseases of youth and the often unnecessary diseases, far too common, in the aged?" On the question of possible grievances which patients may feel, he exhorted the hospital administration to investigate complaints carefully and without prejudice. Alderman Thomas Evans, chairman of the United Cardiff Hospitals, dealt with admission to hospital and the effect on the patient of long delay before admission. He said in many hospitals arrears of admissions have led to the piling up of names on hospital waiting lists with the consequence that less urgent cases may have to wait months or even years for admission. He referred to what he called the "book-keeping" of waiting lists, including questions of the reality of the nominal list at any time. The fear of sickness and admission to hospital are prominent in many patients' minds and there was evidence to suggest that the fear is accentuated when patients are waiting to be admitted for investigation to find out what is wrong with them. On the other hand, an inquiry at Cardiff had brought out the very real difficulty many adults have in accepting a hospital bed at short notice, and many patients still have very great difficulty in arranging for children to be looked after while they are in hospital; or if labouring under serious disability during the waiting period, to get the physical relief that is needed. He was sure hospital authorities could in some cases spare the patient anxieties and domestic complications if they knew more about his non-medical problems and amended their supervisory, advisory and admission procedure accordingly.

Dr. B. Th. G. deJong, medical director of a hospital at Maastricht, Holland, spoke on the utilization of leisure and its effect on the patient and urged that for the chronically ill, occupational therapy should not only give the patient a feeling of pride in the results of his labours but it must also make him feel he is still a useful member of society. Miss N. J. Smyth, matron of St. Thomas Hospital, London, spoke on the effect of modern trends in nursing procedures on the treatment of the patient as a human being, and quoted the International Code of Nursing Ethics adopted by the International Congress of Nurses in 1953, when the fundamental responsibility of the nurse was stated as threefold: to conserve life, to alleviate suffering and to promote health. She said it was of vital importance that a nurse should gain the confidence of her patient from the moment of his entry into hospital; by her reception of him and his relatives, her sympathetic understanding of his apprehension and fears, her explanation of medical and nursing treatments, she would gain his confidence from the beginning and this might do much at a later date to accelerate his cure. On the care of the aged she said that if modern methods of treatment continue on the right lines the elderly chronic patient would no longer be subject to the deplorable state of apathy which at one time prevailed.

Dr. A. Trevor Jones, senior administrative medical officer, Welsh regional hospital board, spoke on the effect on the patient of the attitude of the staff. He said the decrease in the size of the family had a greater effect than is generally realized, for there is often no one at home to care for the patient and this brought into hospital people who require comfort and care rather than expert medical attention. He supported other speakers in emphasizing the need to explain to the patient the reasons for the unfamiliar procedures and apparently unintelligible routines, as he was sure that the more a patient understands, the better he will be able to co-operate with the staff. He commended the advance which has been made in many hospitals by issuing to patients a simple brochure telling them something about the hospital and information which saves much questioning and misunderstanding. Miss H. Riniker, almoner of the Canton Hospital, Aarau, also spoke on the attitude of the staff to the patient and said the staff must always have sufficient time for chronic patients who need nursing permanently. The staff should be able to listen to these patients and maintain their contact with the outside world in all possible ways.

Sir George Henderson presented a report on the activities of a Study and Research Committee set up by the previous congress. Information had been collected by questionnaire from different countries. Almost all the correspondents reported that patients, especially elderly patients, had frequently to be kept in hospital, after the period of active treatment was passed, because home conditions were not suitable for their reception. The difficulties could be mitigated by well organized social services. It was essential, in the view of the committee, that the social service department, whether operated direct by the hospital or by a local authority service or by a voluntary organization, should be advised early of the probable time of completion of active treatment so that arrangements can be made for post-hospital care. But even so, the major difficulty remains and that is the lack generally of (1) sufficient convalescent hospital facilities, (2) organized home care arrangements including a shortage of home nurses.

ADDITIONS TO COMMISSIONS

BRIGHTON BOROUGH

Thomas William Funnell, 74, The Crestway, Brighton, 6.
Arthur Bernard Hunt, 53, Stanford Road, Brighton, 5.
Richard George Kirlew, M.B.E., 17, Harrington Road, Brighton, 6.
Sidney Charles Lynn, O.B.E., T.D., 317, Ditchling Road, Brighton.

BURY ST. EDMUNDS BOROUGH

Miss Margaret Kate Rudd Allen, 7, Highbury Crescent, Bury St. Edmunds.

CITY OF CANTERBURY

Gordon Rodney Donald Hews, Green Hedges, Nunnery Fields, Canterbury.
Leslie William Johnson, 16, Littlebourne Road, Canterbury.

CITY OF CHESTER

Lt.-Col. Henry Langton Birch, Friars, Chester.
Leonard Mortimer Harris, The Flat, 38, Eastgate Row, Chester.
Harold Griffith Jenkins, Elmfield, Christleton, Chester.
Mrs. Annie Gertrude Jones, Wheelock, 16a, Sandy Lane, Boughton, Chester.
Mrs. Janet Scarisbrick, 64, Liverpool Road, Chester.
John Smith, Knowsley House, Knowsley Road, Hoole, Chester.

DEVIZES BOROUGH

Mrs. Ada Amelia John, 3, Stanley Terrace, Pans Lane, Devizes.
Reginald Tom Neate, Plemont, Wick, Devizes.

GLOUCESTER CITY

Charles Seddon Norton Walker, Courtfield, Charlton Kings, nr. Cheltenham.

HUDDERSFIELD BOROUGH

Mrs. Mary Elaine Sykes, Arkholme, Almondbury, Huddersfield.
George Cecil Chadwick, 29, Tunnacliffe Road, Newsome, Huddersfield.
Arthur James Hazelden, 31, Cherry Nook Road, Deighton, Huddersfield.
Robert Thornton Hirst, 113, Lamb Hall Road, Longwood, Huddersfield.
Thomas Ritchie, 32, Thornhill Road, Huddersfield.
Colonel John Bairstow Sugden, T.D., Birch House, Birch Road, Berry Brow, Huddersfield.
Harold Neville Sykes, 31, St. Helen's Road, Almondbury, Huddersfield.

LEICESTER CITY

Albert John Allaway, 37, Guilford Road, Leicester.
Charles Martin Baker, 108, Letchworth Road, Western Park, Leicester.
William Elliott, 16, Albion Street, South Wigston, Leicester.
Lt.-Col. William George Fox, T.D., The Cottage, School Lane, Birstall, Leicester.
John Newton Frears, C.B.E., Narborough House, Narborough, Leicester.
Thomas Eric Horobin, 249, Gooding Avenue, Leicester.
William Walton Noakes, 481, Uppingham Road, Leicester.
James Hugh O'Donnell, M.B., F.R.C.S., 11, De Montfort Street, Leicester.
Wing Commander Samuel Philip Russell, D.F.C., 19, Knighton Rise, Leicester.

MIDDLESBROUGH BOROUGH

Alfred Bunting, 33, Broadgate Road, Middlesbrough.
John Frederick Harries, 105, Cambridge Road, Middlesbrough.

YORKS (EAST RIDING)

John Leslie Licence, Paddock House, Middle Street S., Driffield.
Mrs. Annie Lockey, Patrington Road, Hollym.
John Archbold Naylor, M.C., 13, Scarborough Road, Driffield.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

APPEAL AGAINST DISQUALIFICATION

Reference P.P. 13 of September 24, 1955, I feel that in view of the decision in *Burrows* v. *Hall* (1950) 114 J.P. 356, a right of appeal against disqualification *by virtue of conviction* exists under s. 6 (2) of the Road Traffic Act, 1930.

In that case it was held that the provisions of part I of the Act dealing with disqualification generally and the power to limit the disqualification under s. 6 (1) in particular, are applicable to disqualification by virtue of conviction under s. 35 (a part II offence). In other words, the court ruled that s. 6, which governs only disqualification *by order*, applies equally to disqualification *by virtue of conviction*. This decision appears to give the strongest support possible for the contention that s. 6, including both the power to limit the disqualification (subs. (1)) and the right of appeal against it (subs. (2)), applies also to disqualification *by virtue of conviction* for part I offences, which would, of course, include disqualification by virtue of conviction under s. 15.

Yours faithfully,
C. V. MERCOTT,
Deputy Clerk to the Justices.

Magistrates' Clerk's Office,
Valpy Street,
Reading.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

YOUNG PERSONS IN PUBLIC HOUSES

As you have, on p. 634, *ante*, quoted the views of Miss E. G. Edmonds on the presence of young persons in licensed premises, you may care to put before your readers what I believe to be rather a more long-sighted point of view than that which she takes. Admittedly there would be no more trouble from young persons on licensed premises if they were not allowed there, but is that anything like a complete answer? If they do not go to licensed premises, where else will they go? At least one chief constable has already instanced milk bars as a source of trouble and there are also, of course, registered clubs to which Miss Edmonds in her capacity of probation officer would not be admitted; over which the licensing justices have no control; into which police can only enter if they have a warrant and where so many restrictions (including that relating to sale to persons under 18) which are imposed by the Licensing Acts on the public house do not apply.

The legal restrictions on licensed premises were introduced at the turn of the century and during the abnormal conditions of the 1914-1918 war when the public house was in a very different social sphere from that which it enjoys today. Surely the answer is that legislation should keep pace with changes in social habits and that the controls imposed on licensed premises years ago should be relaxed rather than tightened. Would not this help to make the public house a safer and better meeting place for young persons and is not the object of licensing legislation to improve public houses in every way and to ensure that they remain of real service to every part of the community? To keep children of any age out of licensed premises will militate against allowing the public house to be a family meeting place; if the pub can become a family affair for all members of the family, however young, then the main object of the licensing laws will be achieved.

Yours faithfully,
A. G. P. SMITH.

Colin Langley & Smith,
Solicitors,
82 Hagley Road,
Edgbaston, Birmingham, 16.

PERSONALIA

APPOINTMENTS

Mr. Christopher Davies, at present deputy clerk and accountant to Stocksbridge, Sheffield, urban district council, is to be clerk to Tring, Herts., urban district council. He takes up his new duties on November 1.

Mr. John Tegid Jones has been appointed clerk to Liverpool city magistrates.

Mr. E. A. Powell has been appointed deputy clerk to the justices for the county divisions of The Forest, Reading and Windsor in Berkshire. Mr. Powell, who is 30 years of age, was previously senior court assistant in those divisions, and prior to that appointment had served as assistant clerk in the divisions of Dynaspowis, Glam., Oxford city and Stourbridge, Worcs.

Mr. Harry J. Digweed, deputy superintendent of births, marriages and deaths, at Reading, Berks., has been appointed superintendent registrar of births, marriages and deaths for Rochdale, Lancs., borough.

Mr. Idris Gwyn Williams has been appointed a probation officer in the North Wales combined probation area. Mr. Williams' office will be at Wrexham and he will commence duties on December 1.

RETIREMENT

Mr. C. W. Bloor, assistant town clerk to Birmingham city council, has retired after 25 years' service.

OBITUARY

Mr. John Stanton, the clerk to the justices for Leyland and Leyland Hundred petty sessional divisions, in the county of Lancashire, since 1923, died on October 7. Mr. Stanton was admitted in 1911 after serving his articles in Manchester. From 1913 he was joint clerk with his father, also John Stanton, who had been the clerk since 1883. Mr. Stanton's former practice—he became a whole-time clerk in 1949—now carried on by a fourth generation, a son and a daughter of Mr. Stanton, both qualified solicitors, was established by his grandfather, Mr. Edward Dakin Stanton, who was clerk to Chorley board of guardians for 50 years, and superintendent registrar of births.

Mr. Lyon Clark, who retired as coroner for West Bromwich 12 months ago, has died.

FRENCH LEAVE AND SWEDISH EXERCISES

" A pretty sort of prison I have come to,
In which a self-respecting lady's cell
Is treated as a lounge."

Thus a character in Sir Max Beerbohm's *Savonarola Brown*. Truth is proverbially stranger than fiction, and two recent reports—one from Pont l'Evêque in Normandy, and the other from Stockholm—surpass by far the fantasies of stage comedy or operatic burlesque.

Soon after the War, the prison at Pont l'Evêque received within its gates a number of worthies of exceptional talent and experience. The staff could not cope with them; the head-warder, Monsieur Billa, was as wax in the hands of one Georges Snudde, who was serving a seven years' sentence for armed violence. Complaisance on the one side, and ingenuity on the other, resulted in some strange goings-on. Judicial documents were altered or destroyed, effecting reductions of up to two years in the prisoners' terms. There was a radio-set in every cell; excursions were arranged, to Deauville and elsewhere. Women friends of the inmates had full visiting facilities, and on one occasion a number of prisoners attended a ball at the Sub-Prefecture.

The trial in the magistrates' court has ended with a sentence on M. Billa of three years' imprisonment for " negligence in favouring interference with official documents," and four months on Snudde for " actively corrupting a civil servant." There were some interesting passages during the hearing. On

being questioned by the chairman of the bench as to whether he had ever received his mistress in prison, " Snudde appeared to be shocked, and replied: ' Never—well, at least, only in the parlour. But,' he added ' I never went to Deauville '." This tender solicitude for maintaining the proprieties certainly does him credit, as does also his abnegation in the matter of excursions. " The fact " says *The Times* correspondent " that the prisoners always chose to return after their daily outings is in itself a tribute to the idyllic (and incidentally cheap) life which came to be the rule at this remarkable prison." We are forcibly reminded of an English comedian, popular in Edwardian days, who entertained the masses in his stage character of " P.C. Parker." Having been dismissed the Force for inefficiency, he opened a police-station of his own, and always drew guffaws from an appreciative audience by the peremptory command: " Here, Convict 99, take the key with you when you go out ! I'm tired of waiting up for you, night after night ! "

The massive and gloomy features of Norman architecture render it peculiarly suitable for institutions designed to exercise restraint upon the persons, and a chastening influence upon the spirits, of its inmates. The Tower of London and the Bastille of St. Antoine in Paris long bore witness to these characteristics. The existence of this " model " prison in a Norman town renders the contrast all the more striking, and illustrates the truth behind the well-known lines of Richard Lovelace:

" Stone walls do not a prison make,
Nor iron bars a cage."

Perhaps the most delightful thing about the whole episode was the attractive argument presented by Billa's counsel, according to which the misguided head-warder " was in fact a forerunner of prison reform, and had merely been trying to avoid the hiatus between the life of a free man and that of a convict." This attempt to represent the accused as a kind of composite being, endowed with all the beneficent attributes of a John Howard, a Jeremy Bentham and an Elizabeth Fry rolled into one, did not find favour with the court. Whether he is indeed a humanitarian reformer, born in France before his time, is left to the judgment of posterity.

The news-item from Stockholm is, perhaps, even more impressive, in that it discloses no such irregularity in official conduct as that reported from Pont l'Evêque. The Kingdom of Sweden has a fine tradition of social welfare, and the city gaol of Stockholm sets all other such institutions a splendid example. *The Daily Telegraph* has reported the successful efforts of one Sven Bohlin (who has been serving a 12 months' sentence for embezzlement) to rise above his environment. This Napoleon of finance has been using his obligatory residence as an office for carrying on a flourishing import and export business; his biggest deal was the purchase from Japan of £35,000 worth of red rear-lamps, which have just become a compulsory accessory for Swedish cyclists.

His methods form an admirable illustration of the progressive and enlightened policy of the prison governor—" to give prisoners all the facilities we can, and to see that they try to re-establish themselves in life." Hr. Bohlin had business-stationery printed with the heading " Stockholm 9 " (the P.O. box number of the gaol), and under the discreet anonymity of this address received and conducted a considerable correspondence. He has spent over £500 in telegrams, and has made about 20 telephone calls a day—all through the prison's private exchange. This is no mere Gilbertian situation; it out-Gilberts Gilbert who, 77 years ago, wrote of Ralph Rackstraw, A.B., confined to quarters in *H.M.S. Pinafore*—

" He'll hear no tone
Of the maiden he loves so well!
No telephone
Communicates with his cell! "

Hr. Bohlin, however, unlike the protagonist at Pont l'Evêque, does not waste his time and opportunities on women; business is the sole object of all his devoted love. As a good-conduct prisoner he was granted 72 hours' leave a month. He spent this calling on government departments to obtain import licences, and inviting his " business contacts " to lunch in expensive restaurants. " He was very popular with fellow-prisoners," says *The Daily Telegraph*, " because he used to hand out cigars after these lunches."

Hr. Bohlin's pleasant sojourn as the guest of His Swedish Majesty has, in fact, had only one embarrassing moment. This was when an enterprising salesman, from the Japanese firm which manufactures the cycle-lamps, arrived in Stockholm and telephoned the office-number. An inadequately coached operator told him that he was speaking to the city gaol and, on further inquiry, crowned this piece of verbal infelicity with a supreme *gaffe* to the effect that, no ticket of leave being due that day, the Managing Director could not be allowed out to meet him. We are not told whether oriental urbanity was proof against this shock; but Hr. Bohlin, if he takes proceedings for defamation, will doubtless recover exemplary damages.

All of which goes to show that one man's meat is another's poison or (more appropriately expressed) that no man is a prophet in his own country. Hr. Bohlin is wasted in Sweden, where such things are a commonplace; he should exchange jobs with M. Billa, whose attainments are inadequately appreciated in his native France, or go into partnership with M. Snudde, who would have found in Stockholm his veritable spiritual home.

A.L.P.

NOTICES

The next court of quarter sessions for the city of Coventry will be held on Thursday, November 3, 1955, at the County Hall, Coventry, commencing at 11 *a.m.*

A lecture on " *Donoghue* v. *Stevenson* in Retrospect " will be given by R. F. V. Heuston, LL.B., M.A., Fellow of Pembroke College, Oxford, at University College (Anatomy Theatre), Gower Street, W.C.1, on Monday, December 5, 1955, at 5 *p.m.* The chair will be taken by Professor R. C. Fitzgerald, LL.B., F.R.S.A., Professor of English Law in the University of London. Admission is free, without ticket.

EPITAPH

He gave his Judgments
Gently and politely
And as a general rule
He gave them rightly.

J.P.C.

A state of things
Which only goes to show—
Well—what ?
Why no-one seems to know.

J.P.C.

The howling gales of Rockall
Go blowing hell for leather—
And spread around our islands
The famous BRITISH weather.

J.P.C.

I see that some ladies have booked for the Moon
On the first rocket-flight to the stars;
I can see the A.A. will be busy quite soon
With thousands of Triptyques for Mars.

J.P.C.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Burial—*Death in hospital—Liability for cost of burial.*

By s. 50 of the National Assistance Act, 1948, it is the duty of the council of a county district to cause to be buried the body of any person who has died in its area in any case where it appears that no suitable arrangements for the disposal of the body have been or are being made otherwise than by the authority. The council may recover the cost from the estate of the deceased person or from any person who was liable to maintain. A man died in a hospital in a county borough and an undertaker removed the body to a rural district and made all arrangements for the burial. A bill for £22 was sent to the deceased man's brother who is an old age pensioner and could not pay. Eventually a sum of £20 was paid by the National Assistance Board or Ministry of Pensions and National Insurance, direct to the undertaker or through the brother. The undertaker has made application to the rural district council for the balance of £2. As the deceased did not die in the rural district it appears that there can be no liability. To whom should the undertaker look for the balance. DEEPDOWN.

Answer.

We are not told who instructed the undertaker to take the body away from the hospital—it could have been the brother, or the hospital authorities. The query is also vague as to who procured the payment of £20 already made, and upon what ground. On the information given, the undertaker should look to the hospital authorities. They were the primary parties to arrange burial, since their common law liability (*see R.* v. *Stewart* (1840) 12 Ad. & El. 773) for burial of a person dying on their premises has not been abrogated. If the brother gave an order to the undertaker, he is liable upon the contract, but he was under no legal liability to bury. We agree that there is no possible claim against the rural district council.

2.—Criminal Law—*Larceny—Growing flowers—Larceny Act*, 1861, *s.* 36.

If it is proved that a person picked tulips (the flowers only) from a small memorial garden owned by a local authority, can he be properly convicted of either stealing a plant from a garden or damage with intent to steal a plant from a garden under s. 36 of the Larceny Act, 1861, or is it necessary that the whole plant should have been stolen or the damage caused with intent to steal the whole plant before the defendant can be rightly convicted. TULIP.

Answer.

In our opinion, it is not necessary that the whole plant should be stolen in order to constitute the offence of damaging it with intent to steal, and stealing the flower brings the case within the section.

An alternative charge could be made under s. 14 of the Criminal Justice Administration Act, 1914.

3.—Guardianship of Infants—*Custody of infant—Care and control.*

In a recent application for custody of an infant (both parents being represented in court) a submission was made by the husband's solicitor that a magistrates' court had power to give the custody with maintenance to the mother and to give the "care and control" to the father, who lived in another part of the country, following the case of *Wakeham* v. *Wakeham* [1954] 1 All E.R. 434, heard in the Court of Appeal, Denning, L.J., saying, "In such a situation the usual order is that the father, the innocent party, is given the custody of the child or children, but the care and control is left to the mother."

The case before the magistrates' court was that the wife obtained a maintenance order against her husband on the ground of desertion and she was given the custody of the child of the marriage. Later the husband made an offer to his wife to resume cohabitation but she refused (on the grounds of his conduct towards her while living together) and he presented a petition in the Divorce Court on the ground of his wife's desertion. This was undefended and he obtained a decree. The maintenance order made by the magistrates' court was afterwards discharged, the wife stating that she did not want any maintenance for herself from her husband, but she applied under the above Act for custody and maintenance of the infant child of the marriage. The custody and maintenance of the infant was not mentioned in the Divorce Court and no provision relating thereto was made.

The before quoted case is not referred to in *Stone*, 1955 edn., and I can find no reference to "care and control" in the Guardianship of Infants Act nor any authority enabling a magistrates' court to make such an order as that made in the Divorce Court.

I should appreciate your opinion in the matter.

STIPERK.

Answer.

The only powers possessed by a magistrates' court under the Guardianship of Infants Acts relate to custody, access, and maintenance. They have no inherent powers to make orders relating to other matters, and therefore we hold that they could not make such an order as is suggested. The High Court is not similarly restricted.

4.—Housing Act, 1936, s. 12—*Action affecting single room.*

Section 12 (1) of the Housing Act, 1936, as originally enacted empowered a local authority to take closing order proceedings "in relation to any part of a building which is occupied, or is of a type suitable for occupation by persons of the working classes." It is clear that this provision enabled a local authority to make a closing order in respect of a single room forming part of a flat in a multi-storeyed building comprising a number of flats. The provision of s. 12 (1) of the Act of 1936, as amended by the Housing Act, 1949, empowers a local authority to take closing order proceedings "in relation to any part of a building which is used, or is suitable for use, as a dwelling." It appears that the amendment effected by the Housing Act, 1949, which was intended to delete the reference to the working classes has, in fact, altered the substance of the law since, in the example quoted above, the single room forming part of a flat could not be said to be a "part of a building used as a dwelling."

Do you agree that, except in the case of underground rooms, a closing order may now be made only in respect of a part of a building which comprises a complete dwelling, and not in respect of a single room contained in such dwelling? Further, that the word "which" in the phrases quoted from the section relates to the word "part" and not to the word "building"? POVIS.

Answer.

Before the amendment a room in a flat could be closed because it was part of a building occupied by persons of the working classes [for human habitation] and unfit for human habitation. The amendment, in our opinion, apart from the deletion of working classes, gives the same power except that, instead of leaving occupation for human habitation to be implied, it says "is used or suitable for use as a dwelling." We agree that the relative pronoun relates to the word "part"; in other words, it is not necessary that the whole building shall be used or suitable for use as a dwelling. (Take, as an extreme example, caretaker's quarters in an office skyscraper). But the section does not say that the "part" in question must be "used as a dwelling-house" or "as a separate dwelling." In our opinion the words "used as a dwelling" are synonymous with "used for human habitation."

5.—Justices' Clerks—*Fees—Absentees without leave from H.M. Forces.*

Where an absentee from the Army appears before a magistrate who causes him to be delivered into military custody the clerk to the justices furnishes a descriptive return for which he claims and is allowed a fee of 2*s.*, and the same applies to an absentee from the Royal Air Force and I think it is general to charge no other fee in connexion with a case of this kind. However, a naval absentee is dealt with by a magistrate under s. 9 of the Naval Deserters Act, 1847, and there appears to be no requirement that a descriptive return should be furnished to the naval authorities. In these circumstances it would appear that no fee is chargeable by the clerk to the justices unless he charges for oath, hearing, etc., but, if that should be done in the case of a seaman it would seem to follow that they should be charged in addition to the 2*s.* referred to in para. 1 above in the case of a soldier or airman.

I shall be glad to have your opinion as to the proper fees to be charged by the clerk in respect of (*a*) Army and Air Force personnel and (*b*) Naval personnel dealt with by the court and handed over to escorts. SOXTO.

Answer.

The practice of charging a fee for descriptive return only, in the case of Army and Air Force deserters, is doubtless based on the fact that there is a special set of fees under the heading Army Act and that this is considered to include all the fees chargeable. There being no special fees prescribed in the case of the Navy, it seems appropriate to charge such fees as are appropriate under the general table of fees.

Our answers, therefore, are:

(*a*) Two shillings.

(*b*) This depends on the particular fees incurred, *e.g.*, for oaths, hearing. *See* note (*b*) on p. 2656 of *Stone*.

6.—Landlord and Tenant—*Rent not reserved by express covenant—Place of payment.*

A is the owner of a house let to B by oral agreement at a weekly rent, the house being within the Rent Restriction Acts. At the commencement of the tenancy, A being friendly with B used to call frequently at the house, and received the rent in the course of these visits. On occasions the rent was delivered at A's house by B. A no longer calls at the house, and B has declared the rent is available for collection on the premises, but will not forward or deliver it to A. Having regard to the decision of *Haldane* v. *Johnson* (1853) 8 Ex. 689, will B have a good defence to an action by A to recover the arrears of rent, or for use and occupation of the premises. P. LEX.

Answer.

Rent is payable on the land demised, unless otherwise stipulated: *see* Co. Litt. 201 b; *Rowe* v. *Young* (1820) 2 Brod. & B. 165, *per* Bayley, J., at p. 234. An express covenant to pay rent raises an implied duty for the tenant to seek out his landlord in order to pay; *see Haldane* v. *Johnson* (1853) 8 Ex. 689, but in this case there is no express covenant and B will, therefore, have a good defence if A does not collect.

7.—Music, etc., Licence—*Television in public house—Whether licence required.*

I have read with interest P.P. 5 at 119 J.P.N. 322, and shall be glad to know whether you feel it necessary to reconsider this matter in the light of certain provisions of the Cinematograph Act, 1952.

It would appear that the combined effect of ss. 1 (1) and 9 (1) of the Act of 1952 is to include television in the expression "cinematograph exhibition" and to apply the provisions of the Act of 1952 and the Act of 1909 (with certain exceptions) to television exhibitions. Section 7 (1) of the Act of 1952 enacts that a licence shall not be required for any premises under any enactment for the regulation of places kept or ordinarily used for public dancing, singing, music or other public entertainment of the like kind by reason only of the giving of a cinematograph exhibition which includes representations of persons playing music, dancing or singing or which otherwise includes or is accompanied by music. It would seem, therefore, that a television exhibition in a public house, provided the subject-matter televised comes within the requirement of "representations of persons playing music, dancing or singing or which otherwise includes or is accompanied by music" would not require a music and dancing licence. If the subject-matter televised was not within the description above it would also appear a licence would not be necessary under any enactment relating to music, singing, and dancing.

The Act of 1952 comes into operation on such date as the Secretary of State may by statutory instrument appoint, and it would appear from the notes in the 1955 issues of *Stone* and *Paterson* that at the time of going to press the Act had not been brought into operation, although *Paterson* adds a note that it is expected the Act will come into operation during the currency of the present edition.

If the submissions made above as to the effect of the Cinematograph Act, 1952, are correct, it would seem that at the moment the position is as stated in the answer to P.P. 5, but that the impending change needs to be borne in mind. Your observations would be appreciated. ONIDDLE.

Answer.

We have reconsidered our answer to P.P. 5, at p. 322, *ante*, in relation to the Cinematograph Act, 1952—*when this Act comes into force*.

Section 9 of the Act defines "cinematograph exhibition" in terms wide enough to include television, and the phrase in s. 1 of the Act "by means not involving the use of films" indicates that a public television exhibition is caught by the Act. *See also* the marginal note to s. 1.

But television in a public house is usually designed as an added amenity for the customers who are admitted to the exhibition without payment: therefore, we think that television in these conditions is an "exempted exhibition" within the meaning of s. 5 (1) of the Act, whereby, by sub-para. (*a*) of the subsection, a licence under the Cinematograph Act, 1909, will not be required. Whether or not, in spite of s. 7 of the Cinematograph Act, 1952, the public house should be licensed for public dancing, singing, music, *or other public entertainment of the like kind*, will remain doubtful.

Therefore, after reconsideration, we adhere to our answer to P.P. 5 on p. 322, *ante*.

By the Cinematograph Act, 1952 (Commencement in England and Wales) Instrument, 1955 (S.I. 1955, No. 1128), the Cinematograph Act, 1952, will come into operation in England and Wales on January 1, 1956.

8.—Road Traffic Acts—*Goods vehicles—Keeping of records—Position when vehicle not being used for the carriage of goods.*

The stated cases of *Manning* v. *Hammond*, *Blenkin* v. *Bell*, and *Wooley* v. *Moore*, allow for a goods vehicle under 3 *tons*, unladen weight, to be exempt from the provisions of s. 10 of the Road Traffic Act, 1930, which relates to maximum speed outside the built-up-area. If the rate of speed is not governed, would you agree, or otherwise, that the Goods Vehicles (Keeping of Records) Regulations, 1953, do not apply. As you are aware, s. 1 of the Road and Rail Traffic Act, of 1933, deals with the issue of licences for goods vehicles, and s. 8 deals with the conditions of these licences. If it is deemed that an unladen vehicle of under 3 *tons* unladen weight is exempt from the conditions relating to speed, then it would seem that the drivers are exempt from keeping records and complying with the hours of driving and periods of rest. JOFLO.

Answer.

We have dealt with this question before, *see* 116 J.P.N. 63 (P.P. 18) and 366 (P.P. 7). As those questions show, some people do not agree with our view, but we consider that unless a vehicle is being used, at the relevant time, for a purpose for which a licence under the 1933 Act is necessary, there are no requirements of any licence which have to be complied with, and the regulations about the keeping of records do not apply.

9.—Road Traffic Acts—*Uninsured vehicle—Evidence of use depends on statement by person accused to police—Prima facie case.*

X is charged with unlawfully using a vehicle on a road there not being then in force such a policy of insurance, etc., as complied with part II of the Road Traffic Act, 1930, contrary to s. 35 of that Act. The case for the prosecution on the question of use is that the vehicle was found on a road stationary and unattended. A police officer six weeks later interviewed X at his home and asked him if he was in charge of the vehicle at the time, to which X replied: "Yes. It broke down. I had to leave it there until I could get it to a garage." At the close of the case for the prosecution X's solicitor submits that there is no case to answer as there is no evidence that the vehicle had actually been used by X. The statement made by X impliedly but not expressly admits use but other interpretations can be placed upon the statement. It is, for example, conceivable that the vehicle had been used by some other person from whom X took charge of it after it had broken down. Is this statement, therefore, sufficient evidence for the magistrates to rule that there is a *prima facie* case and to call upon X to put forward his defence? J.E.G.

Answer.

This is a question for the magistrates to decide. If they conclude that the evidence given by the police officer amounts to an admission by the defendant that he himself was using the vehicle on the road at the time and place alleged in the summons they must hold that there is a *prima facie* case for the defendant to answer.

10.—Shops Act, 1950—*Sunday sales—Box tricycles and mobile shops.*

I shall be glad if you will let me have your views on the following problem:

Can (*a*) the owner of a box tricycle or (*b*) the owner of a mobile shop be prosecuted for an offence under s. 47 of the above Act? It is to be assumed that no orders have been made under the provisions of ss. 48 and 51 of the Act.

In s. 74 the definition of "shop" includes any premises where any retail trade or business is carried on, but I am very doubtful if either a box tricycle or mobile shop could properly be called "premises," particularly in view of the decision in *Eldorado Ice Cream Co., Ltd.* v. *Clark* [1938] 1 All E.R. 330; 102 J.P. 147.

It seems hard that articles not included in sch. 5 of the Act can be sold from a mobile shop whereas an ordinary shopkeeper in the same street is prevented from selling them, but I incline to the view, at the moment, that there is a loophole in the Act which permits this state of affairs to exist. SEDONA.

Answer.

The *Eldorado* case, *supra*, and the Scottish case of *Nixon* v. *Capaldi* [1949] S.L.T. 381, were discussed in an article at 114 J.P.N. 446. Reference may also be made to a question and answer at 116 J.P.N. 238.

We incline to the view that under the present Act the street in which sales are conducted from a box tricycle or a mobile shop is a place within the meaning of s. 12 of the Act, and that a prosecution could properly be instituted. The article above mentioned was published before the Act of 1950 came into operation, and the view we take is strengthened upon comparing s. 12 of the new Act with s. 13 of the Act of 1936.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

NORTHAMPTONSHIRE PROBATION AREA

Appointment of Male Probation Officer

APPLICATIONS are invited for the appointment of a whole-time male Probation Officer for the above area.

Applicants must be not less than 23 nor more than 40 years of age, except in the case of a serving officer.

The appointment and salary will be in accordance with the Probation Rules and the salary will be subject to superannuation deductions. The person appointed to this post will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with the names of two referees, must reach the undersigned not later than November 19, 1955.

J. ALAN TURNER,
Secretary of the County
Probation Committee.

County Hall,
Northampton.

BRIERLEY HILL URBAN DISTRICT COUNCIL

Appointment of Legal Assistant

APPLICATIONS are invited for the above appointment in the office of the Clerk of the Council.

Candidates must have had experience in conveyancing and general legal work.

The salary will be within Grade II of the A.P.T. Division of the National Scales of Salaries—maximum £640 per annum.

The Council will provide housing accommodation if required.

Applications, stating age, qualifications and the nature of the work previously undertaken, and accompanied by copies of two recent testimonials, should reach the undersigned not later than Monday, October 31, 1955.

HERBERT HEX,
Clerk of the Council.

Civic Buildings,
Brierley Hill.

EAST NORFOLK PROBATION AREA

Appointment of Whole-time Woman Probation Officer

THE East Norfolk Probation Area Committee invites applications for the appointment of a Woman Probation Officer to be stationed at Great Yarmouth, whose services will be assigned to that County Borough and to adjoining Petty Sessional Divisions. The person appointed will be required to provide a motor car for use in connexion with her duties for which use travelling allowances will be payable.

The appointment and salary will be in accordance with the Probation Rules and the selected candidate will be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with the names and addresses of two persons to whom reference can be made, should be received by the undersigned not later than November 12, 1955.

H. OSWALD BROWN,
Secretary to the East Norfolk
Probation Area Committee.

County Offices,
Thorpe Road,
Norwich.

CITY AND COUNTY OF BRISTOL

Junior Assistant Solicitor

APPLICATIONS invited for above appointment at salary in accordance with Special Grade (£690 × £30—£900) of National Scale. Appointment subject to one month's notice. Applications, giving names of two referees, must reach me by November 12, 1955.

ALEXANDER PICKARD,
Town Clerk.

Council House,
Bristol, 1.

COUNTY BOROUGH OF STOCKPORT

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of an Assistant Solicitor. The salary will be in accordance with the scale £690 × £30—£900 per annum, dependent upon when the applicant was admitted.

Forms of application and conditions of appointment may be obtained from the undersigned, to whom applications should be returned by November 5, 1955.

J. HAYDON W. GLEN,
Town Clerk.

Town Hall,
Stockport.

BEDFORDSHIRE PROBATION AREA COMMITTEE

APPLICATIONS are invited for the post of full-time female Probation Officer. The appointment and salary will be subject to the Probation Rules, and the selected candidate will be required to pass a medical examination. Applications, by November 14, 1955, on forms obtainable from the Secretary, Bedfordshire Probation Area Committee, Shire Hall, Bedford.

LANCASHIRE NO. 5 PROBATION AREA

Appointment of Whole-time Female Probation Officer

APPLICATIONS are invited for the above appointment.

Applicants must be not less than 23 years nor more than 40 years of age, except in the case of a serving officer. The appointment will be subject to the Probation Rules, 1949 to 1955, and the salary will be in accordance with the prescribed scale and subject to superannuation deductions.

The successful applicant may be required to pass a medical examination.

Applications, stating age, qualifications, experience and present salary (if already serving), accompanied by copies of not more than two recent testimonials, should reach me not later than November 30, 1955.

THOMAS NOONE,
Clerk to the Probation Committee.

Borough Justices' Clerk's Office,
Town Hall,
Burnley,
Lancs.

APPOINTMENTS

COVENTRY CORPORATION require Assistant Solicitor. Salary £780—£900. Applicants must have practised as solicitors for more than two years and be experienced in advocacy and conveyancing. Housing accommodation may be provided. Particulars of appointment from Town Clerk, Council House, Coventry. Applications by November 16, 1955.

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